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AGENCIES



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## TABLE OF CONTENTS

August 24, 2001      Volume 25, Issue 34

### PROPOSED RULES

COMMERCE AND COMMUNITY AFFAIRS, DEPARTMENT OF	
Technology Advancement And Development Act Programs	
14 Ill. Adm. Code 545, Repeal .....	10565
Technology Advancement And Development Act Programs	
14 Ill. Adm. Code 545 .....	10623
NATURAL RESOURCES, DEPARTMENT OF	
Oil And Gas Wells On Public Lands Act	
62 Ill. Adm. Code 250 .....	10649
PUBLIC AID, DEPARTMENT OF	
Medical Assistance Programs	
89 Ill. Adm. Code 120 .....	10658
Medical Payment	
89 Ill. Adm. Code 140 .....	10672
Rights And Responsibilities	
89 Ill. Adm. Code 102 .....	10689
PUBLIC HEALTH, DEPARTMENT OF	
Maternal Death Review	
77 Ill. Adm. Code 657 .....	10694
REVENUE, DEPARTMENT OF	
Electricity Excise Tax Law	
86 Ill. Adm. Code 511 .....	10698
Income Tax	
86 Ill. Adm. Code 100 .....	10711
STATE POLICE, DEPARTMENT OF	
Certification And Training Of Electronic Criminal Surveillance Officers	
20 Ill. Adm. Code 1295 .....	10731

### ADOPTED RULES

CAPITAL DEVELOPMENT BOARD	
Prequalification And Bidder Responsibility	
44 Ill. Adm. Code 950 .....	10741
Prequalification Of Architects And Engineers	
44 Ill. Adm. Code 980 .....	10759
CORRECTIONS, DEPARTMENT OF	
Discipline And Grievances	
20 Ill. Adm. Code 504 .....	10775



PUBLIC HEALTH, DEPARTMENT OF/HEALTH FACILITIES PLANNING BOARD	
Health Facilities Planning Procedural Rules	
77 Ill. Adm. Code 1130 .....	10786
HEALTH FACILITIES PLANNING BOARD	
Narrative And Planning Policies	
77 Ill. Adm. Code 1100 .....	10796
PUBLIC HEALTH, DEPARTMENT OF/HEALTH FACILITIES PLANNING BOARD	
Processing, Classification Policies And Review Criteria	
77 Ill. Adm. Code 1110 .....	10806
HUMAN SERVICES, DEPARTMENT OF	
Food Stamps	
89 Ill. Adm. Code 121 .....	10823
Treatment And Habilitation Services	
59 Ill. Adm. Code 112 .....	10834
STATE POLICE MERIT BOARD, DEPARTMENT OF	
Procedures Of The Department Of State Police Merit Board	
80 Ill. Adm. Code 150 .....	10853
POLLUTION CONTROL BOARD	
Pretreatment Programs	
35 Ill. Adm. Code 310 .....	10860
Sewer Discharge Criteria	
35 Ill. Adm. Code 307 .....	10867
PROFESSIONAL REGULATION, DEPARTMENT OF	
Acupuncture Practice Act	
68 Ill. Adm. Code 1140 .....	10893
Illinois Dental Practice Act	
68 Ill. Adm. Code 1220 .....	10901
Mail Order Contact Lens Act	
68 Ill. Adm. Code 1215 .....	10911
REVENUE, DEPARTMENT OF	
Retailers' Occupation Tax	
86 Ill. Adm. Code 130 .....	10917
Use Tax	
86 Ill. Adm. Code 150 .....	10937

**JOINT COMMITTEE ON ADMINISTRATIVE RULES-  
STATEMENT OF OBJECTIONS, SUSPENSIONS, RECOMMENDATIONS,  
PROHIBITED FILINGS & APPROVALS**

EDUCATION, STATE BOARD OF Certification 23 Ill. Adm. Code 25, Objection .....	10945
HUMAN SERVICES, DEPARTMENT OF Partner Abuse Intervention 89 Ill. Adm. Code 501, Failure To Remedy .....	10946
REVENUE, DEPARTMENT OF Persons Property Tax Relief And Pharmaceutical Assistance Act 86 Ill. Adm. Code 530, Objection .....	10947

**NOTICE OF PUBLIC INFORMATION**

BANKS AND REAL ESTATE, OFFICE OF Notice Of Fine Imposed Under The Residential Mortgage License Act Of 1987 .....	10948
LABOR, DEPARTMENT OF Contractor Prohibited From An Award Of A Contract Or Subcontract For Public Works Projects .....	10949

**REGULATORY AGENDA**

REVENUE, DEPARTMENT OF Income Tax 86 Ill. Adm. Code 100 .....	10950
---	-------

**JOINT COMMITTEE ON ADMINISTRATIVE RULES**

Second Notices Received .....	10965
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**ISSUES INDEX I-1**

**Editor's Note:** The Cumulative Index and Sections Affected Index will be printed on a quarterly basis. The printing schedule for the quarterly and annual indexes are as follows:

Issue 16-April	14, 2000:	Data Through March	31, 2000
Issue 29-July	14, 2000:	Data Through June	30, 2000
Issue 42-October	13, 2000:	Data Through September	30, 2000
Issue 3-January	19, 2001:	Data Through December	31, 2000 (Annual)



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

1) Heading of the Part: Technology Advancement & Development Act Programs

2) Code Citation: 14 Ill. Adm. Code 545

3) Section Numbers: Proposed Action:

545.10 Repealer  
545.20 Repealer  
545.25 Repealer  
545.30 Repealer  
545.40 Repealer  
545.50 Repealer  
545.60 Repealer  
545.70 Repealer  
545.110 Repealer  
545.120 Repealer  
545.130 Repealer  
545.140 Repealer  
545.150 Repealer  
545.160 Repealer  
545.170 Repealer  
545.180 Repealer  
545.190 Repealer  
545.195 Repealer  
545.210 Repealer  
545.215 Repealer  
545.220 Repealer  
545.225 Repealer  
545.230 Repealer  
545.235 Repealer  
545.240 Repealer  
545.245 Repealer  
545.250 Repealer  
545.255 Repealer  
545.260 Repealer  
545.265 Repealer  
545.270 Repealer  
545.275 Repealer  
545.280 Repealer  
545.285 Repealer  
545.290 Repealer  
545.310 Repealer  
545.315 Repealer  
545.320 Repealer  
545.325 Repealer  
545.330 Repealer  
545.335 Repealer  
545.340 Repealer  
545.345 Repealer

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

545.350 Repealer  
545.355 Repealer  
545.360 Repealer  
545.365 Repealer  
545.410 Repealer  
545.420 Repealer  
545.430 Repealer  
545.440 Repealer  
545.450 Repealer  
545.460 Repealer  
545.470 Repealer  
545.495 Repealer

4) Statutory Authority: Implementing and authorized by the Technology Advancement and Development Act [20 ILCS 700].

5) A Complete Description of the Subjects and Issues Involved: The Department is concurrently proposing rules that will provide a more clear and concise policy and procedural guide. Therefore, it is necessary to repeal the entire existing rule.

6) Will these proposed repealers replace emergency repealers currently in effect? No

7) Does these rulemaking contain an automatic repeal date? No

8) Do these proposed repealers contain incorporations by reference: No

9) Are there any repealers pending on this part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act [30 ILCS 805].

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Ms. Raya Bogard  
Illinois Administrative Code Rules Manager  
Department of Commerce and Community Affairs  
James R. Thompson Center  
100 West Randolph, Suite 3-400  
Chicago IL 60601

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses and small municipalities affected: Programs and activities authorized under the Act primarily target small and

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

medium sized businesses with 1,000 or fewer employees. Targeted firms are those involved in advanced technology projects including, but not limited to, projects designed to foster greater knowledge or understanding, or which are designed for the purposes of improving, designing, developing, prototyping, producing or commercializing new products, techniques, processes or technical devices in present or emerging fields of health care and biomedical research, information and communication systems, computing and computer services, electronics, manufacturing, robotics and materials research, transportation and aerospace, agriculture and biotechnology, and finance and services. Not-for-profit corporations may serve as an "intermediary organization" under grant or contract with the Department to operate one or more programs.

B) Reporting, bookkeeping or other procedures required for compliance: The rule specifies administrative procedures for the various programs funded under the Technology Advancement and Development Act and includes application procedures and subsequent programmatic and fiscal reporting requirements. In addition, the rule specifies audit, record keeping, and related procedures necessary to safeguard State funds and for prudent administration of authorized programs.

C) Types of professional skills necessary for compliance: Professional skills required of grantees will vary depending on the specific area of technology being targeted for development. In addition to skills related to the targeted technology, grantees must have skills associated with the administration of public programs, including program and financial management skills.

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: this rulemaking was not anticipated.

The full text of the Proposed Repealer begins on the next page:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

## TITLE 14: COMMERCE

## SUBTITLE C: ECONOMIC DEVELOPMENT

## CHAPTER I: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## PART 545

TECHNOLOGY ADVANCEMENT AND DEVELOPMENT ACT PROGRAMS (REPEALED)

## SUBPART A: TECHNOLOGY CHALLENGE GRANT PROGRAM

Section	
545.10	General Purposes
545.20	Definitions
545.25	Incorporation by Reference
545.30	Program Responsibilities
545.40	Eligible Applicants
545.50	Application Process
545.60	Review of Applications
545.70	Program Administration Requirements

## SUBPART B: TECHNOLOGY VENTURE INVESTMENT PROGRAM

Section	
545.110	Purpose
545.120	Definitions
545.130	Application Cycle
545.140	Application Review
545.150	Application Documentation
545.160	Application Evaluation
545.170	Funding
545.180	Selection for Funding
545.190	Allowable Leverage
545.195	Administrative Requirements

## SUBPART C: BUSINESS MODERNIZATION RETOOLING LOAN PROGRAM

Section	
545.210	Purpose
545.215	Definitions
545.220	Eligible Businesses
545.225	Eligible Uses of Loan Funds
545.230	Application Documentation
545.235	Application Evaluation
545.240	Selection for Funding
545.245	Funding Waivers
545.250	Allowable Leverage
545.255	Loan Agreement
545.260	Loan Terms
545.265	Loan Security



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

545.270 Maintenance and Insurance of Property  
 545.275 Administrative Requirements  
 545.280 Audits  
 545.285 Termination of Loan  
 545.290 Events of Default

## SUBPART D: BUSINESS MODERNIZATION ASSESSMENT GRANT PROGRAM

Section  
 545.310 Program Purpose and Mission  
 545.315 Definitions  
 545.320 Eligible Grant Categories  
 545.325 Eligible Businesses  
 545.330 Application Requirements  
 545.335 Applicant Process  
 545.340 Application Evaluation Standards  
 545.345 Selection Criteria  
 545.350 Grant Limitations  
 545.355 Administrative Standards for Grant Recipients  
 545.360 Project Reporting  
 545.365 Modification, Suspension and Termination of Grant

## SUBPART E: DEVELOPMENT CORPORATION PROGRAM

Section  
 545.410 Program Purpose  
 545.420 Definitions  
 545.430 Applications  
 545.440 Application Review Process  
 545.450 Financial Assistance  
 545.460 Administrative Standards  
 545.470 Financial Assistance Standards  
 545.480 Audits (Repealed)  
 545.490 Modification, Suspension and Termination of Financial Assistance (Repealed)  
 545.495 General Terms Governing Relending

AUTHORITY: Implementing and authorized by the Technology Advancement and Development Act [20 ILCS 700].

SOURCE: Emergency rules adopted at 13 Ill. Reg. 19753, effective December 1, 1989, for a maximum of 150 days; emergency expired April 30, 1990; adopted at 14 Ill. Reg. 9016, effective May 29, 1990; amended at 15 Ill. Reg. 15040, effective October 4, 1991; amended at 18 Ill. Reg. 8415, effective May 23, 1994; amended at 18 Ill. Reg. 17213, effective November 17, 1994; old Part repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: TECHNOLOGY CHALLENGE GRANT PROGRAM

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

## Section 545.10 General Purposes

## a) General Purposes of the Act

- 1) To increase the level of investment in research and development utilizing industry, state and local government, and labor and academia to create statewide programs fostering an improved environment for productivity and technological competitiveness.
- 2) To utilize Illinois' present resources in many developing areas including health care and biomedical research, information and telecommunications, computing and electronic equipment, manufacturing technologies and materials research, transportation and aerospace, geoscience, financial and service industries, and agriculture and biotechnology.
- 3) To identify, develop and commercialize technology which will permit Illinois firms to successfully compete in today's world markets.
- 4) To promote systematically those private sector and nonprofit research institution efforts that will continue to insure Illinois' economic vitality and competitiveness. (Section 1002 of the Act)

## b) General Purposes of the Technology Challenge Grant Program:

- 1) To help secure federal research and development projects for this State, and
- 2) To identify and develop technology programs capable of commercialization. (Section 2001 of the Act)

## c) Grant Purposes

- 1) Grants shall be awarded only for the following purposes:

- A) To respond to unique, advanced technology projects for which no other source of funding is available and which foster the development of Illinois' economy through the advancement of the State's scientific and technological assets.
- B) To assist eligible applicants in the State apply for, or qualify for and leverage, federal funds awarded for advanced technology projects concerning research and development, business innovation research or technical development, or the transfer of useful technology to the private sector.
- C) To fund technology partnerships, technology consortiums or research centers and industry technology associations that are, or will be, established to perform research and development in present and emerging technologies that can be developed for use by commerce and industry, or to transfer technology and conduct training and information dissemination that is directly applicable to industrial commercialization of technology developments.
- D) To assist in the needs assessment and evaluation of the status of technology implementation throughout the State.

- 2) Grants awarded pursuant to this Subpart may be used to help subsidize expenses, as approved by the Department, for capital

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

improvements, equipment, contractual services, commodities, personnel, support costs, including telecommunication, electronic data and commodities, or other costs (Section 2002 of the Act).

## Section 545.20 Definitions

"Act" - The Technology Advancement and Development Act (P.A. 86-870, effective September 8, 1989).

"Advanced Technology Project" - Any area of basic or applied research or development which is designed to foster greater knowledge or understanding, or which is designed for the purposes of improving, designing, developing, prototyping, producing or commercializing new products, techniques, processes or technical devices in present or emerging fields including but not limited to health care and biomedical research, information and communication systems, computing and computer services, electronics, manufacturing, robotics and materials research transportation and aerospace, agriculture and biotechnology, and finance and services (Section 1003(a) of the Act).

"Application" - A request for program funds including the required statistical and narrative information and attachments.

"Associated Private Sector Coalition" - The Illinois Coalition. The Illinois Coalition is a private, not-for-profit corporation formed to advance the scientific and technological strength of Illinois by increasing publicly and privately supported research and development, and to improve the economic prospects of Illinois and the region.

"Coalition" - The Illinois Coalition.

"Committee" - The Governor's Science Advisory Committee.

"Department" - The Illinois Department of Commerce and Community Affairs.

"Director" - The Director of the Illinois Department of Commerce and Community Affairs.

"Grant" - Funds provided from the Department through the Technology Challenge Grant Program.

"Grant Award" - Contractual agreement between the Department and grantee, which includes the scope of work to be provided, the budget, and all terms and conditions of the contract.

"Grantee" - Any eligible applicant receiving funds under this program.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

"Nonexpendable Personal Property" - Tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.

"Program" - The Technology Challenge Grant Program.

"Program Income" - Earnings by the recipient realized from grant supported activities.

"Project" - An activity or activities funded under this program.

## Section 545.25 Incorporation by Reference

a) Any incorporation by reference in this Part of standards of a nationally recognized organization or association includes no new amendments or editions after the date specified.

b) The American Institute of Certified Public Accountants is located at 1211 Avenue of the Americas, New York, New York, 10036-8775.

## Section 545.30 Program Responsibilities

a) The Department shall establish and administer a Technology Challenge Grant Program as provided under the provisions of the Act. The Department, in addition to those powers granted under Section 46.60 of the Civil Administrative Code of Illinois (Ill. Rev. Stat. 1991, ch. 127, par. 46.60) [20 ILCS 605/46.60] is granted the powers specified in Section 1004 of the Act.

b) Governor's Science Advisory Committee

1) The Department and the Illinois Department of Energy and Natural Resources are hereby authorized to cooperate with and provide support to the Governor's Science Advisory Committee and the Coalition. Such support may include but not be limited to the provision of office space and may be technical, advisory or operational in nature.

2) The Committee shall be comprised of distinguished representatives from academia, business, the environmental community, scientific community and government agencies and shall be appointed by the Governor. The Science and Technology Advisor to the Governor shall serve as chair of the Committee. The position and duties of Science and Technology Advisor to the Governor are described in Executive Order Number 10 (1991).

3) The Committee shall review and evaluate all applications for grants from the Technology Challenge Grant Program. The Committee shall determine the scientific and technical merit of the proposal with respect to the purposes of the Technology Challenge Grant Program.

4) The Committee may seek evaluations from external reviewers and may form review panels, subcommittees, study groups, or task



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

forces for purposes of conducting the review and evaluation. These review and evaluation tasks may be conducted jointly with the Coalition.

- 5) The Committee shall make a report of findings and recommendations for funding to the Director of the Department. The Committee may seek concurrence from the Coalition regarding the Committee's findings and recommendations.

- 6) The recommendations for funding made to the Director may include recommendations for multi-year commitments by the Department. All such recommendations shall be subject to availability of appropriations and all applicable law.

c) Associated Private Sector Coalition

- 1) A private sector coalition shall be formed in association with the Committee to advance the scientific and technological strength of Illinois by increasing publicly and privately supported research and development, and to improve the economic prospects of Illinois and the region. The associated private sector coalition shall be the Illinois Coalition.

- 2) In accordance with Section 46.60 of the Civil Administration Code of Illinois, the Department shall cooperate with the Coalition for the purpose of administering programs to identify, develop or commercialize technology or promote private sector efforts to identify, develop or commercialize technology.

- 3) The Coalition shall include representatives of Illinois businesses, both large and small, representatives of labor organizations, representatives of government, representatives of institutions of higher education research including federal laboratories located in Illinois.

- 4) The Coalition shall review and evaluate all applications for a grant from the Technology Challenge Grant Program as presented to the Coalition by the Department. The Coalition shall determine the potential economic and commercial benefits of the proposed project to Illinois with respect to the purposes of the Technology Challenge Grant Program and the likelihood that the project for which assistance is sought will:

- A) contribute to Illinois' scientific and technological development;
- B) promote the private commercialization of new products and processes by and for Illinois businesses;
- C) establish consortia for research and development in Illinois; or
- D) increase Illinois' competitiveness for federal and private sector research and development funds.

- 5) The Coalition may seek evaluation of applications from external sources and may form subcommittees for the purposes of conducting the review and evaluation. The Coalition may seek concurrence from the Committee, regarding the Coalition's findings and recommendations. The Coalition may conduct its review and

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 6) The Coalition shall make a report of its findings and recommendations to the Director.

## Section 545.40 Eligible Applicants

Eligible applicants shall include:

- a) universities, colleges, community colleges, nonprofit research foundations or laboratories, State research institutions, industry technology associations, or
- b) Technology partnerships or technology consortiums established by a formal joint project agreement between:
  - 1) two or more private industries, or
  - 2) Any combination of one or more private industries with one or more universities, colleges, community colleges, nonprofit research laboratories, nonprofit research foundations, or State research institutions. [20 ILCS 700/2001]

## Section 545.50 Application Process

- a) At least annually the Department shall issue a Request for Proposals (RFP) soliciting grant requests for the Technology Challenge Grant Program. The RFP shall include the deadline(s) for applications and a timeline for the applications' review and notification to the applicants. Applicants shall be notified within 120 days of the application deadline.

- b) Applications to the Technology Challenge Grant Program shall include:
  - 1) A cover page with the title of the application; the name of the institution submitting the application; the name, address and telephone number of the individual authorized to submit the application; and if different, the name, address and telephone number of an individual qualified, willing, and available to answer questions about the application that may arise during the review of the application; the amount of State funding requested; and the starting and ending dates for the proposed project.
  - 2) A summary or abstract of the proposed project.
  - 3) The body of the application may be in whatever format the applicant believes best describes the proposed project. A text of less than ten pages is sufficient for most projects. A list of references cited and other key documents should be provided.
  - 4) A one or two page professional resume should be provided for the proposed project manager or principal investigator.
  - 5) Twelve complete copies of the application should be submitted to:
 

Director  
Illinois Department of Commerce & Community Affairs  
Office of Technology and Competitiveness  
James R. Thompson Center  
100 West Randolph Street, Suite 3-400



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

Chicago, Illinois 60601

Attn: Technology Challenge Fund

- c) The application shall contain responses to all of the following (the Act requires that the Department consider these items in determining grant awards):

- 1) *The relationship of a proposed advanced technology project to the State's future economic growth;*
  - 2) *The qualifications and expertise of consultants, firms or organizations undertaking the effort;*
  - 3) *The potential for leveraging federal or private research dollars, or both for the initiative;*
  - 4) *The extent of the capacity of the applicant or the applicant partnership or consortium to finance the initiative;*
  - 5) *The potential for adapting, commercializing or adopting the results of the applicant's project for the economic benefit of the State; and*
  - 6) *The likelihood that the project has a potential for creating new jobs or retaining current jobs in the State.* [20 ILCS 700/2003]
- d) All applications shall include a budget page(s) detailing the proposed use of Technology Challenge grant funds and the relationship of that requested funding to all other funds to be applied to the project.

## Section 545.60 Review of Applications

- a) The Department shall receive all applications to the Technology Challenge Grant Program. The Department shall conduct an initial screening of all applications to determine the completeness of the application.

1) Applications found to be incomplete shall be returned to the applicant with notice of the deficiency. Applications which are returned may be resubmitted for consideration.

2) Applications determined by the Department to be substantially complete shall be forwarded within 10 working days to the Committee and the Coalition for their respective or joint review, evaluation and determination of merit.

- b) The Department shall evaluate complete grant applications based upon criteria provided under the Act.

1) In determining which grant applicants shall be awarded a Technology Challenge grant, the Department shall conduct an evaluation of prior compliance with grant agreements for any grant applicant previously funded by the Department. In making this determination, the Department shall look for evidence of: consistent failure to submit required reports, failure to maintain required reports, failure to protect inventory or misuse of equipment or findings of fraud and abuse.

2) *The Department shall consider the following criteria in determining grant awards:*

- A) *The relationship of a proposed advanced technology project*

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

to the State's future economic growth;

- B) *The qualifications and expertise of consultants, firms or organizations undertaking the effort;*
- C) *The potential for leveraging federal or private research dollars, or both, for the initiative;*
- D) *The extent of the capacity of the applicant or the applicant partnership or consortium to finance the initiative;*
- E) *The potential for adapting, commercializing or adopting the results of the applicant's project for the economic benefit of the State; and*
- F) *The likelihood that the project has a potential for creating new jobs or retaining current jobs in the State.* [20 ILCS 700/2003]

3) The Department shall forward all applications to the Committee or the Coalition for review and recommendations for funding. The Committee or the Coalition shall review and evaluate all applications reviewed by the Department and make a report of findings and recommendations to the Director.

4) Upon receipt of the recommendations by the Committee and the Coalition, the Director shall consider those reports and the findings of the Department's evaluation. The Department shall not award any Technology Challenge grant that is not recommended for funding by the Committee or the Coalition. The Director shall determine the level of the grant award and shall determine the share of total directly attributable costs of an advanced technology project which may be considered for funding under this Subpart. Directly attributable costs are: capital improvements, equipment, contractual services, personnel, support costs, including telecommunications, electronic data processing, audits and commodities.

## Section 545.70 Program Administration Requirements

- a) Record Retention and Review - Grantees will, as deemed necessary by the Department, permit the Department or its representatives to have full access to and the right to examine any pertinent documents, papers, and records of the recipient involving transactions related to a grant under this program. To the extent authorized by the Freedom of Information Act (Ill. Rev. Stat. 1991, ch. 116, pars. 201 et seq.) [5 ILCS 140], the Department will not make public any information disclosing program supported technical information if such disclosure would affect the commercialization potential of the project.

b) Financial Management Standards - A grantee's financial management system shall be structured to provide for accurate, current, and complete disclosure of the expenditures under the grant program. The grantee is accountable for funds received under this grant and shall maintain effective control and accountability over all funds, equipment, property, and other assets under the grant. Grantee records



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

shall be sufficient to permit the tracking of funds to a level of expenditure adequate to ensure that funds have not been spent unlawfully.

## c) Method of Compensation -

- 1) Payments pursuant to a grant are subject to the availability of funds appropriated by the General Assembly.
- 2) Payments to the grantee are subject to the initiation of an invoice voucher. The first payment for program initiation may be an advance for the first month's cash needs. Thereafter, the payments are dual purpose in that they will be sufficient to cover the expenditures to date as well as the cash needs of the recipient for the next period. Otherwise, payments may be made pursuant to the project budget and a schedule agreed to by the Department and the grantee.

- d) Audits - The grantee will conduct an audit of all appropriate program records (such as books of accounts, warrants, receipts for payment, reports of in-kind expenditures, time sheets and bank deposit slips) as required by the Department, using an independent certified public accountant, licensed by authority of the State of Illinois pursuant to the Illinois Public Accounting Act (Ill. Rev. Stat. 1991, ch. 111, pars. 5500.01 et seq.) [225 ILCS 450]. The audit must be conducted in accordance with generally accepted auditing standards adopted by the American Institute of Certified Public Accountants (AICPA) (1989) and must be submitted to the Department within six months of the expiration of the grant. If the grantee is routinely audited by the Auditor General of the State of Illinois, the grant need not be audited separately by the grantee.

- e) Suspension and Termination - If the grantee fails to comply with the terms and conditions of the Grant Award, the Department shall, after notice to the grantee, suspend the grant and withhold further payments or prohibit the grantee from incurring additional obligations of grant funds. The Grant shall be reduced or terminated in the absence of full state funding; if the Department determines that the grantee has failed to comply with the terms and conditions of the Grant in whole, or in part; or if the Department and the grantee agree that the continuation of the program objectives would not produce beneficial results commensurate with the future expenditures of funds. Grants shall be terminated for consistent failure to submit required records, failure to maintain required reports, failure to protect inventory, misuse of equipment, or findings of fraud and abuse.

- f) Nondiscrimination - The grantee shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act (Ill. Rev. Stat. 1991, ch. 68, pars. 1-101 et seq.) [775 ILCS 5].

- g) Complaint Process - In the case of a grantee complaint, the Department will follow the procedures outlined in 47 Ill. Adm. Code 10 (Review and Appeal Procedures).

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- h) Patent and Technical Information - Grantee copyright and patent policies must provide for protection of technical information, and identify ownership and control of patents. The State of Illinois shall be granted a no charge license to use the technology covered by any patent for which the technology was either conceived or reduced to practice with grant funds.

- i) Publication, Promotion, and Marketing - Grantees shall provide copies of public information and promotional documents, such as program reports, annual reports, informational brochures, fact sheets, manuals, or other similar documents. In addition, all such documents, technical journals and scientific research papers resulting from grant activities must include acknowledgement of the support of the State of Illinois, Department of Commerce and Community Affairs.

- j) Administrative Costs - Only 15% of direct costs can be used as general indirect costs.

- k) Program Match - Each grantee shall be required to match Department funds, except as noted below.

- 1) Department funds shall account for no more than 50% of the project's costs. Match can include cash or in-kind contributions as well as indirect cost contributions exclusive of the 15% ceiling noted in subsection (j). Grant monies or other funds received from the federal government or from other public and private entities can be calculated as match, provided that such funds are directly related to the objectives of the project and are under the administrative control of the project director.

- 2) The Director may waive the match requirement upon recommendation of the Committee or the Coalition. Match may be waived when it is demonstrated that no other source of funds is known or available to support the project or that the project would not go forward without the waiver. The waiver will be documented and kept on file by the Department.

- 1) Interest on Grant Funds - In accordance with Section 10 of the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1991, ch. 127, par. 2310) [30 ILCS 705/10], all interest earned on funds held by the recipient under this grant shall become part of the grant principal when earned unless the grant agreement provides otherwise. However, any interest earned on funds subject to a Department grant after the grant's expiration date shall become part of the grant principal and shall be so treated for all purposes.

- m) Program Reports - Each grantee is required to report financial and programmatic data to the Department on a regular basis on forms prepared by the Department. Standards reports are as follows:

- 1) Expenditure Summary - The grantee shall maintain appropriate records of actual grant costs on expenditure summaries supplied by the Department. These expenditure summaries will identify line item costs charged to the grant and line item matching share supplied by the applicant or third parties. Expenditure Summaries are to be submitted to the Department by the 30th day following

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

the end of each fiscal quarter in which any expenditure of grant funds or match funds is made.

- 2) Program Report - Each grantee shall prepare a program report. The program report shall include a narrative report on progress towards achieving objectives and activities which advance technology, leverage federal or private research dollars and activities which adapt, commercialize or adopt advanced technologies for the benefit of the State or which create or retain jobs in Illinois and economic impact of the program (Section 2003 of the Act). Program reports shall be submitted to the department by the 30th day following the end of each fiscal quarter.

- n) Confidentiality of Trade Secrets and Commercial or Financial Information - Applications and other information obtained by the Department under the Technology Challenge Fund shall be administered pursuant to Section 7 of the Freedom of Information Act (Ill. Rev. Stat. 1991, ch. 116, par. 207) [5 ILCS 140/7]. Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm including all information determined confidential under Section 4002 of the Act shall be exempt from inspection and duplication. Nothing in this subsection shall be construed to prevent a person or business from consenting to disclosure.

- o) Third Party Award Challenge - Applicants denied funds by the Department in accordance with the provisions of this Act shall not be construed to be conveyed with the right to challenge the awarding of funds by the Department to successful applicants, nor to challenge any other agreement executed in connection therewith.

## SUBPART B: TECHNOLOGY VENTURE INVESTMENT PROGRAM

## Section 545.110 Purpose

- a) Through the Technology Venture Investment Program (Program), the Department of Commerce and Community Affairs will provide capital for investing in young or growing Illinois businesses in cooperation with private investment companies, private investors, or conventional lending institutions. Projects supported by program funds will be with businesses seeking funding for any new process, technique, product or device commercially exploitable by Illinois businesses in fields such as health care and biomedical products, information and telecommunications, computing and electronic equipment, manufacturing technology, materials, transportation and aerospace, geoscience, financial and service industries, and agriculture and biotechnology. Program funds shall be used for such costs including, but not limited to, research and development costs, acquisition assets, amortizable

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

organization costs, general selling and administrative expenses, working capital, purchase or lease of machinery and/or equipment, and the acquisition and/or improvement or rehabilitation of land and buildings. The ultimate purpose of the program is to provide funding for advanced technology oriented businesses that is likely to increase job opportunities as a result of the investment.

- b) Any business operating in Illinois may submit a business plan requesting financial assistance under this Program.

## Section 545.120 Definitions

"Advanced technology project" means any area of basic or applied research or development which is designed to foster greater knowledge or understanding, or which is designed for the purposes of improving, designing, developing, prototyping, producing or commercializing new products, techniques, processes or technical devices in present or emerging fields of health care and biomedical research, information and communication systems, computing and computer services, electronics, manufacturing, robotics and materials research, transportation and aerospace, agriculture and biotechnology, and finance and services.

"Business expense" includes working capital financing, the purchase or lease of machinery and equipment, or the lease or purchase of real property, including construction, renovation or leasehold improvements, but does not include refinancing current debt.

"Business project" means any specific economic development activity of a commercial, industrial, manufacturing, agricultural, scientific, financial, service or other not-for-profit nature, which is expected to yield an increase in jobs or to result in the retention of jobs or an improvement in production efficiency.

"Department" means the Illinois Department of Commerce and Community Affairs.

"Director" means the Director of the Illinois Department of Commerce and Community Affairs.

"Financial assistance" means a loan or a grant or the purchase of qualified securities or other means whereby financial aid is made to or on behalf of a business project or advanced technology project.

"Participating lender" means any trust company, bank, savings bank, credit union, merchant bank, investment bank, broker, investment trust, pension fund, building and loan association, savings and loan association, insurance company, venture capital company, entity or funding source which assumes a portion of the financing for a business



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

project.

"Qualified security investments" means any stock, convertible security, treasury stock, limited partnership interest, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, investment contract, certificate of interest or participation in a patent or application or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or right to subscribe to or purchase any of the foregoing, but not including any instrument which contains voting rights or which can be converted to contain voting rights in the possession of the Department.

**Section 545.130 Application Cycle**

Companies interested in applying for financial assistance under this program must submit a business plan for review. Plans will be accepted throughout the year and consideration of plans will be ongoing until funds are exhausted. Business plans shall summarize, document and convey the company's business strategy, markets, competition, products, management, financial status, and other information relevant for making an informed investment decision (see Section 545.150).

**Section 545.140 Application Review**

Review process -- The Department shall screen all business plans to determine that all requirements of the program have been addressed. Applicants will be notified of deficiencies in business plans and given an opportunity to correct such deficiencies through resubmission. Business plans meeting overall program guidelines will be provided with a formal application requiring additional information not contained in the business plan. Complete applications will then be reviewed and evaluated by Department staff. This review and evaluation process will be completed within 90 working days of the receipt of a complete application. Department staff will conduct an evaluation of each application.

**Section 545.150 Application Documentation**

The application shall provide the following information:

- a) Executive Summary -- a brief description of the company, the major points in the business plan, and the project for which the company is seeking funding. The executive summary shall convey the key aspects of the plan and that the company is likely to be commercially viable and feasible.
- b) History of Company -- a brief history of the business to date if the company has been an ongoing concern. If the company is a start-up or development stage enterprise, a brief history of the company's progress to date shall be included.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- c) Market Information -- information on the relevant market and market size for the company's products, and identification of existing and potential customers and competitors of the product.
- d) Product Information -- information on the company's existing and anticipated products or services, information on the technology as it relates to these products/services, and a description/analysis of the products/services competitive advantage over existing or anticipated competing products.
- e) Financial Statements -- if the company is an ongoing concern, historical financial statements for the past three years and interim statements for the period ending at or within 90 days of the application date including:
  - 1) Profit and loss statements,
  - 2) Balance sheets,
  - 3) Cash flow statements, and
  - 4) Disclosure statements of any material issues which may affect the financial statements including contingent liabilities.
- f) Pro forma Financial Statements -- three years of financial projections of the items in subsections (e)(1) through (4), including a monthly cash flow statement for the first year of operations.
- g) Land and Building Information -- if land or building is being acquired, an independent appraisal and a copy of the purchase option or agreement; for building construction or renovation, a contractor or architect's cost estimates.
- h) Description of Machinery and Equipment -- if machinery and equipment are being acquired, an identification of major classes of equipment to be acquired as part of the project, as well as estimates from vendors for new equipment purchased. The applicant shall, if applicable, include written estimates, appropriate appraisals, and moving and installation cost estimates.
- i) Description of Working Capital -- a budget outlining the sources and uses of funds for the project and an explanation of the need for and use of the funds.
- j) Company Management -- a listing of those people responsible for the management of the company (including resumes and personal references), their positions and job responsibilities and percentages of ownership, if applicable.
- k) Letters of Commitment -- if currently available, letters documenting commitments by investors to provide financing for the project, including any bank commitment letters documenting the term, rate and other requirements for the loan.

**Section 545.160 Application Evaluation**

Applications will be evaluated on the technical, market, and financial feasibility of the proposal. Completed applications and corresponding business plans will be reviewed by program staff. The review and evaluation process shall be completed within 90 days, although the time of the review is dependent

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

on the complexity of the project. The Program's review and evaluation process will address the following criteria:

- a) Technical Evaluation Component: The Department may require applicants to undergo a technical feasibility analysis conducted under the auspices of a designated university technology center or under the auspices of individuals/organizations that possess the expertise to evaluate the technology (as evidenced by academic and professional credentials in the subject matter of the proposed project) if the Department lacks the ability to evaluate the project's technical merit. The Department will require applicants to show: the likely source of matching funds that will cover fifty percent of total project costs; project implementation readiness including written commitments from all lenders and investors (if available); and written cost estimates supporting project costs.
- b) Financial Evaluation Component: The applicant's proforma financial statements, including projected annual balance sheets, income statements and cash flow statements and related information.
- c) Market Evaluation Component: The Department will require the applicant to show the market feasibility of the project which shall include, if applicable, an analysis of the size of the potential market, the anticipated market share, the competitive advantage the project has over existing products on the market, the degree of the competitive advantage, and the potential users of the product(s).
- d) Management Evaluation Component: The Department will require key management to show what their record of performance in a related field has been or how other experiences may benefit the project and may make it viable. The Department will also require the applicants to show their commitment in time and/or personal funds to the project.

## Section 545.170 Funding

- a) Program Funds  
The Fund may invest up to \$500,000 in an advanced technology project that can exhibit, based on evaluation of the criteria listed in Section 545.160, the likelihood of the technical and commercial viability of the project's products and/or services and that seeks funds for expenses that include but are not limited to costs incurred for research and development, organizational costs, working capital, machinery and equipment and the acquisition of land and buildings. Investments may be secured by royalties on the anticipated sales of the company, debt, convertible debt, common and/or preferred stock. The amount of money that shall be invested in the program shall be determined in light of the amount requested, amount of matching funds available to the applicant and the capital requirements of the proposed project.
- b) Funding Limitations  
In accordance with Section 3004(a) of the Act, the Director will waive the funding limitation governing the amount of the state's percentage

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

participation in the project when it is determined that a waiver of these limits is required to meet the purpose of the Act. Funding to projects will also be subject to evidence that there is an increased job opportunity in the near term as a result of the investment. Applicants shall list the number and types of jobs to be created five years from the date the project is undertaken. In determining whether to grant such a waiver, the Director shall consider the following factors, if applicable: the project would not go forward but for the State's participation; the business is located in a distressed community; the anticipated business has a likelihood of generating new or increased business or investment within the State. The waiver will be documented and kept on file by the Department.

## Section 545.180 Selection for Funding

For any application meeting the criteria of Section 545.140, the program staff will conduct a field/site visit to verify the information in the application which will lead to the final funding decision. The field visit will determine:

- a) whether information in the application corresponds to information provided by a physical site visit, by interviewing company management and reviewing company records; and
- b) whether the site meets the needs of the company at the current time based upon the current and anticipated operational needs of the company; and
- c) the extent to which information provided in the application is correct based upon research into the company's industry, market, technology, project and management team.

## Section 545.190 Allowable Leverage

- a) Allowable leverage will include funds expended by the business after the date which the Department receives a complete application provided that:
  - 1) the business can provide purchase orders, receipts or other documentation to substantiate that the funds were expended after the date the Department received the complete application;
  - 2) documentation clearly indicates that expenditures are for expenses or assets directly related to, and under the control of, the business applicant, (i.e., receipts, property control records, documents evidencing the scope of signature authority of an applicant's employees);
  - 3) the business provides the Department with a resolution by the business proprietor, President, Chairman and/or Board of Directors, attesting that the documentation provided for proof of matching funds accurately represents the money spent and period during which the funds were expended.
- b) Forms of leverage not allowable will include:
  - 1) funds expended by the business prior to the date which the



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

Department received a complete application;

- 2) existing in-state equipment, land, buildings, furnishings, inventory already owned and being utilized;
- 3) lines of credit;
- 4) post-project costs (such as operation expenses);
- 5) debt refinancing.

## Section 545.195 Administrative Requirements

- a) Equity - Equity investments shall contain provisions for selling (existing) the equity position, which may include provisions requiring the company to repurchase the state's equity shares at fair market value at a point in the future, possibly within four to eight years from the date of the investment. Fair market value of the state's equity shares to be determined by mutual agreement or arbitration.

- b) Termination of the Investment - The Department's investment shall be terminated for the following reasons:

- 1) Termination Due to Loss of Funding - In the absence of state funding for the investment fund for a year, all investments committed to for that year will be terminated in full. In the event of a partial loss of state funding, the Department will make proportionate cuts to all recipients. In the event that the Department suffers such a loss of funding in full or in part, the Department will give the recipient written notice setting forth the effective date of full or partial termination, or if a change in funding is required setting forth the change in funding and changes in the approved budget.

- 2) Termination for Cause

- A) If the Department determines that the recipient has failed to comply with the terms of the agreements it has made with the Department (royalty agreement, loan agreement, stock purchase agreement, etc.) the Department shall terminate the investment in whole or in part at any time. Circumstances, explained in the appropriate agreements, which will result in the right of termination by the Department include, but are not limited to the following:

- i) Consistent failure to submit required reports;
- ii) Failure to maintain required records;
- iii) Failure to protect inventory;
- iv) Misuse of equipment purchased with the Department's funds;
- v) Evidence of fraud and abuse; and/or
- vi) Consistent failure to meet performance standards set forth in the agreements.

- B) The Department shall promptly notify the recipient in writing of the Department's determination to terminate, the reasons for such termination and the effective date of the termination. Payments made to the recipient of recoveries

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

made to the Department shall be made in accordance with the legal rights and liabilities explained in the agreement (e.g., payment schedules, default rates of return, late payment penalties).

- 3) Termination by Agreement - The Department and the recipient shall terminate the investment in whole or in part when the Department and the recipient agree that continuation of the program and the investment's objectives would not produce beneficial results commensurate with any future expenditure of funds. Both parties shall agree upon termination conditions, including the effective date, and in the case of a partial termination, the portion to be terminated.

- c) Events of Default - The entire amount of the investment or the amount of unpaid balance owed to the Department shall be due and payable to the Department if any one of the following events shall occur and be continuing at the time of such demand by the Department, whether voluntarily or involuntarily, or without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, provided, however that such sum shall not be payable if recipient's payments have been deferred. The Department will make deferrals based upon a case by case review of the recipient's financial statements and projections to determine if the recipient can make such payments at a future date or dates.

- 1) Non-payment of Indebtedness - If the recipient shall fail to make payment of any amount owed to the Department when due.
- 2) Incorrect Representation or Warranty - If any representation or warranty contained in, or made in connection with the execution and delivery of the agreement, or in any certificate furnished hereto shall prove to have been incorrect.

- 3) Default in Covenants - If the recipient shall default in the performance of any other term, covenant or agreement contained in the agreements and such default shall remain unremedied for thirty (30) days after either:

- A) It becomes known to an executive officer of the recipient; or
- B) Written notice thereof shall have been given to the recipient by the Department.

- 4) Voluntary Insolvency - If the recipient shall cease to pay its debts as they mature or shall voluntarily file a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidation of its assets or to effect a repayment plan with its creditors, or shall be adjudicated bankrupt, or shall make voluntary assignment for the benefit of creditors.

- 5) Involuntary Insolvency - If an involuntary petition shall be filed against the recipient under any bankruptcy or insolvency law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the recipient, or the

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

property of the recipient, or a writ or warrant of attachment shall be issued against the property of the recipient and such petition shall not be dismissed, released or bonded within 30 days after filing or levy.

- d) Notice of Default - The recipient agrees to give the Department written notice of any event, within 15 days of the event, which constitutes an event of default.

- e) Monitoring and Evaluation - Recipients must permit any agent authorized by the Department, upon presentation of credentials to, in accordance with the constitutional limitation on administrative searches, have full access to and the right to examine any documents, papers, and records of the recipient involving transactions related to the Department's investment.

- f) Audits -- For the term of the Agreement:

- 1) The Department shall have the right to require the company to obtain audited financial statements including a statement of profit and loss, balance sheet, and cash flow statement, which have been prepared by an independent certified public accountant, licensed by the State of Illinois, pursuant to the Illinois Public Accounting Act (Ill. Rev. Stat. 1987, ch. 111, pars. 5500 et seq.), in accordance with generally accepted accounting principles consistently applied.

- 2) The Department reserves the right to conduct at any time during normal working hours, special audits, including, but not limited to, an agency wide audit of funds expended by the company relating to the Department's investment.

- g) Reporting -- for the term of the Agreement:

- 1) The recipient shall provide the Department with quarterly financial reports which include statements of profit and loss, balance sheets and statements of sources and uses of cash, certified as true and correct by the Company's Board of Directors.

- 2) The recipient shall provide the Department with quarterly narrative progress reports summarizing new jobs created, business activities and technological developments, certified as true and correct by the Company's Board of Directors.

- h) Nondiscrimination - The recipient shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act (Ill. Rev. Stat. 1987, ch. 68, pars. 1-101 et seq.).

- i) Financial Management - The recipient's financial accounting system shall be structured under the accounting standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (AICPA) (September 19, 1987) to maintain accountability over its business transactions.

SUBPART C: BUSINESS MODERNIZATION RETOOLING LOAN PROGRAM

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

## Section 545.210 Purpose

Through the Business Modernization Retooling Loan Program (Program) the Department of Commerce and Community Affairs (Department) will provide long term, fixed-rate, low-interest (i.e., more than three years at below the prime rate current in the major money centers) loans to mature, small or medium sized businesses in Illinois in cooperation with private sector lenders, for the purpose of modernization and installation of advanced technologies or processes which will improve a business's production system and work organization which in turn will preserve or create private sector jobs for Illinois citizens (Section 3001(ii) of the Act).

## Section 545.215 Definitions

*Business Project* -- Any specific economic development activity of a commercial, industrial, manufacturing, agricultural, scientific, financial, service or not-for-profit nature, which is expected to yield an increase in jobs or to result in the retention of jobs or an improvement in production efficiency. (Section 1003(c) of the Act)

*Department* -- The Illinois Department of Commerce and Community Affairs.

*Loan* -- Acceptance of any note, bond, debenture, or evidence of indebtedness, whether unsecured or secured by a mortgage, pledge, deed of trust, or other lien on any property, or any certificate of, receipt for, participation in, or an option to any of the foregoing. A loan shall bear such interest rate, with such terms of repayment, secured by such collateral, with other terms and conditions, as the Department shall deem necessary or appropriate. (Section 1003(g) of the Act)

*Participating Lender* -- Any trust company, bank, savings bank, credit union, merchant bank, investment broker, investment trust, pension fund, building and loan association, savings and loan association, insurance company, venture capital company or other institution (Section 1003(h) of the Act) which provides a share of the financing for a business project.

*Production Efficiency* -- Improvements in production levels, quality of output or timeliness of delivery such as indicated by:

*Productivity Measures* -- for example, increased sales value produced per labor or machine hours, increased production volume per labor or machine hour, increased gross income per employee, or increased ratio of sales value to production costs;

*Effectiveness* -- for example, decreased defects per total products, decreased returns per products shipped, or decreased late order compared to total orders;



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

Efficiency -- for example, reduced product cycle time, reduced work-in-progress inventory, increased total production compared to budgeted or actual costs, reduced non-production labor hours per total labor hours, or reduced capital investment per unit produced;

Revenue and Expense Measures -- for example, increased sales revenues, increased sales contracts, increased profit after taxes, elimination/prevention of company losses, reduced production costs, reduced total company expenses;

General Capacity Measures -- for example, increased capacity to capture contracts, increased product longevity, or change in market share.

Program -- The Business Modernization Retooling Loan Program.

**Section 545.220 Eligible Businesses**

a) Eligible Businesses -- Any small, medium-sized or mature Illinois business may make an application for financial assistance under this program. An eligible business includes any for-profit business located in Illinois organized as a sole proprietorship, partnership, corporation, joint venture, association or cooperative. For the purpose of this program, a mature business is one (including predecessor companies) which has been in continuous profitable operation for at least two years or has a meaningful operating history.

b) Targeting -- No firm shall be excluded from participation in this program by reason of amount of sales or income or number of employees. The Department shall actively advertise and promote availability of assistance through this program to medium-sized (50 to 500 employees) businesses in major industrial groups whose final goods, services, or products are sold to markets/consumers outside of Illinois or sold locally and substitute for those imported from outside the state.

**Section 545.225 Eligible Uses of Loan Funds**

a) Funds made available for company modernization or retooling may be for any purpose consistent with the objectives of the Act including, but not limited to, corporate restructuring; purchases of advanced machinery, equipment and tooling; organizational expenses; personnel training; working capital; any other business expense reasonably related to the project; or acquisition, improvement or rehabilitation of land and buildings which is an integral but subordinate part of a new production or process technology.

b) Funds made available to eligible applicants for modernization or retooling shall not be made for more than \$500,000 or for more than 25 percent of the business project costs unless the Director of the Department determines that a waiver of these limits in accordance with Section 545.245 is required to meet the purposes of the Act.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

**Section 545.230 Application Documentation**

Applications under the Business Modernization Retooling Loan Program will be accepted on an ongoing basis. The Department will supply interested businesses with an application upon request. Upon reasonable request, representatives of the Department shall provide assistance to businesses in completing the application. During the application process, business applicants shall provide the Department representatives access to the place of business and site where the business project will be undertaken. The Department shall provide notice to the business prior to requesting such access and shall request access only during the business's normal working hours. The application must include documentation of the following:

- a) Description of the Project -- A summary description of the project including a description of what the company plans to do with the proceeds of the loan.
- b) Company History -- A brief history of the applicant, past employment growth, and other facts detailing the past and present condition and structure of the company, as well as identification of the common name of the company if different from the legal name.
- c) Market Information -- A description of the primary business of the company, types of products and services offered, information on the applicant's present and future market prospects, and identification of existing and potential major customers and competitors.
- d) Actual and Pro Forma Financial Statements -- Financial statements must be submitted by the company. Audited financial statements are preferred; prepared financial statements are the minimum which is acceptable. Prepared statements must be certified by the applicant's chief executive officer as being prepared from the books and records of the company, fairly reflecting the operations and financial position of the company. Financial statements shall include:
  - 1) Historical corporate financial statements for the past three years, including Profit and Loss Statements, Balance Sheets, and disclosure of contingent liabilities;
  - 2) Interim financial statements (Profit and Loss Statements and Balance Sheets) dated not more than ninety days prior to application; and
  - 3) Three-year projections of the Profit and Loss Statement and Balance Sheet and a Monthly Cash Flow Projection for the first year.
- e) Management Qualifications --
  - 1) A listing of those people who are responsible for the management of the applicant firm, their positions, and percentage of ownership;
  - 2) Personal resumes for senior staff at the proposed project site; and
  - 3) Personal financial statement(s) for each principal owning more than 20 percent of the applicant firm.
- f) Site Map -- If appropriate, an outline of the general location of the

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

business project on a site map, including the location of any flood plain or prime farmland areas.

- g) Need for Funds -- A statement and proof (justification) of a need for state supported low-interest, long term funds, such as:

- 1) Demonstration that the applicant's operation is at a competitive disadvantage with industry located outside the state, or
- 2) Demonstration that funds are not available internally or rate of return does not justify investment, or
- 3) Demonstration of a financing gap such that funding from private sources is not available at affordable costs.

- h) Use of Funds -- A detailed explanation of the use of funds including:

- 1) Description of Machinery and Equipment -- Major equipment or classes of equipment to be acquired with the Department's program funds; for the acquisition of new machinery and equipment, attachments showing reliable vendor cost estimates; for moving and installation costs, attachment of written estimates; for used machinery and equipment acquisition, an appraisal demonstrating that the fair market value is in line with the purchase price.
- 2) Description of Working Capital (if applicable) -- A detailed explanation of the need for and use of funds; for acquisition of new inventory, written estimates of cost must be provided from the vendor.
- 3) Land and Building Information (allowable only if it is an integral but subordinate part of the project) -- For land and/or building rehabilitation, a contractor's or architect's cost estimates; for land purchase, a copy of the purchase option and evidence of completion of environmental due diligence review conducted in accordance with Section 5 of the Responsible Property Transfer Act of 1988 (Ill. Rev. Stat. 1988 Supp., ch. 30, par. 905).

- i) Letters of Commitment -- Commitment letters documenting all sources of leveraging of outside funds. Loans from financial institutions must have language indicating the loan amount, the specified term and interest, collateral, conditions attendant to the loan, and the fact that the loan is approved.

- j) Economic Development/Competitiveness Results -- A statement of results expected which shall include:

- 1) Number, type and, if possible, wages of new jobs to be created or existing jobs saved, greater continuity of employment, or greater number of hours worked; and either
  - 2) Expected reduction in the business's operating costs, increased company products/sales, or elimination/prevention of company losses; or
  - 3) Expected increases in the business's capacity per employee, improved quality of product(s), improved timing of delivery, etc.
- k) Project Implementation Schedule -- A list of the timelines for major project milestones and/or activities including the start date and end date of each activity.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- l) Subsidiaries and Parents -- Name and identification of relationship to parent companies, subsidiaries, or affiliates.
- m) Articles of Incorporation -- Copy of the Articles of Incorporation and bylaws or partnership agreement as appropriate.

## Section 545.235 Application Evaluation

- a) Application Screening -- The Department shall screen all applications to determine that all requirements of the application package have been addressed. Applicants will be notified of deficiencies in applications and given one opportunity to correct such deficiencies through resubmission. Department staff will conduct a technical, need/benefit, and financial evaluation of each application as provided in Section 545.235(b)-(d). This review and evaluation process will be completed within 60 calendar days of the receipt of a complete application.
- b) Technical Evaluation Component -- Each application will be reviewed to assure compliance with the technical program requirements. The technical evaluation will address the following criteria:
  - 1) Project Implementation Readiness -- The applicant must demonstrate project readiness, including identification of loans and investments from all lenders and investors on letterhead, signed and dated; time schedule for immediate project initiation; and written cost estimates from contractors, suppliers, and architects which support project costs.
  - 2) Information Verification -- Department staff will conduct phone interviews or field visitations as necessary to evaluate and verify information.
  - 3) Case Performance -- Desk audits will analyze the case performance of the applicant under previous Departmental programs, if applicable (e.g., success in previous projects and the level of compliance with previous agreements).
- c) Evidence of Need and Benefit Component -- Each application will be reviewed to determine if sufficient need exists for public assistance.
  - 1) Retooling/Modernization Focus -- The applicant must demonstrate that the project will involve the purchase of advanced technology and other expenditures integral to technological improvement, which investment is based on a documented plan of retooling or adaptation to competition including such plans as may be prepared under the Business Modernization Assessment Grant Program.
  - 2) Project Benefit -- The applicant must demonstrate
    - A) the project will have a public benefit of providing a net increase or net retention of jobs for Illinois citizens and
    - B) the project will have a private benefit of improving productivity, effectiveness, or efficiency of the firm's production activities or will increase revenues or reduce expenses.
  - 3) Need for Funds -- The applicant must demonstrate the need for



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

program funds including an indication of alternative funding sources pursued. Additionally, the firm must provide evidence

A) of a financing gap such that adequate project financing (rates or terms) cannot be obtained from conventional sources, or

B) evidence of rate of return problems such that the project is not viable or return is not satisfactory without Department participation at a low interest rate and long term, or

C) business demonstrates its operation is at a competitive disadvantage with industry located outside the state.

d) Financial Evaluation Component -- The applicant's financial statements, including annual Balance Sheets and Profit and Loss Statements for the past three years as well as the most recent ninety days; a three year projected Balance Sheet and Profit and Loss Statement as well as one-year monthly Cash Flow Statement, will be reviewed through a standard credit analysis. Data and statistics on sales, liquidity ratios, working capital, profit after taxes, margins, overhead, operating cycle, company wealth, officer commitment, projections and project leverage will be analyzed.

1) Indicators -- Company statistics will be compared to similar data for companies in the same industry using "Robert Morris Associates Annual Statement Studies" published by Robert Morris Associates, P.O. Box 8500, S-1140, Philadelphia, Pa., 19178 (1988), if such industry is evaluated by this source. In addition, these statistics are examined for improvement over time.

2) Projections -- Projections provided by applicants will be reviewed for reasonableness, in light of past performance and the anticipated project investment.

3) Financial Stability -- If cash flow exceeds debt service, and if the Department is satisfied that working capital is adequate, quality of debt is sufficient, and trends and projections are consistent and supportive, the applicant will be determined financially stable.

4) Project Leverage -- The applicant must demonstrate that other financing with respect to the business project is provided. Other financing may be in the form of any loan, equity position, convertible preferred stock, letter of credit, guarantee, bond purchase or any other form approved by the Department (Section 3002(a) of the Act) except funds provided through other Departmental programs. The investment from private sources, which shall comprise the majority of the business project funding, and the owner's equity to be contributed, which shall be a significant part of the business project funding, shall be verified as available and/or committed to the project.

## Section 545.240 Selection for Funding

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

Applications that best meet the objectives of the Act and satisfy the evaluation criteria of Section 545.235 will receive funds, until all available funds are expended. The amount of funds made available will be based upon:

a) *Costs of the expected retooling or modernization effort and the likelihood the work will result in substantial improvement in the applicant's production levels, quality of output, or timeliness of delivery* (Section 3004(b) of the Act) in the maximum of 25 percent of the total project costs up to a maximum amount of \$500,000 of public funds, unless such ratio or amount is waived by the Director in accordance with Section 545.245.

b) *Job creation or retention which will result in relation to the value of the funds requested and types of jobs created or retained* (Section 3004(b) of the Act) at a minimum ratio of one job created or retained for each \$15,000 in public funds, unless such ratio is waived by the Director in accordance with Section 545.245.

## Section 545.245 Funding Waivers

In accordance with Section 3004 (b) of the Act, the Director may waive limitations governing the amount of the loan, percentage of leverage, or the jobs/dollar ratio when it is determined that these funding limitations would prohibit an otherwise approved business project, and subsequent job creation/retention, from occurring. A business project with a higher ratio will be considered for funding if the application demonstrates severe need, including but not limited to:

a) Distressed community or county with an unemployment rate which is 25 percent higher than the state average, or a per capita income which is less than the state average;

b) Area with limited economic development as evidenced by absence of development activities within the last two years or as evidenced by new job growth rate less than the state or national average;

c) Funding would support business which has provided assurance that the project will generate business growth and job creation in the community as a result of spinoff businesses, and thus evidence that the additional jobs will be created or retained;

d) Funding is needed to avert loss of a major employment source (more than 100 jobs or 2 percent of the local base) in the community;

e) Jobs to be created or retained offer wages substantially higher than the prevailing wage in the industry as determined by the Illinois Department of Labor pursuant to (Ill. Rev. Stat. 1987, ch. 48, pars. 39sl-39sl2) and Section 6-3 of the Illinois Purchasing Act (Ill. Rev. Stat. 1987, ch. 127, par. 132.6-3), or an annual wage higher than the state's median income as computed by the Department's Division of Research and Analysis, 620 East Adams, Springfield, Illinois 62701, (217)782-1438.

## Section 545.250 Allowable Leverage

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- a) Allowable leverage contributed by the applicant may include such tangible assets as:
- 1) Under-utilized land and/or buildings which are a part of the project and which are normally a part of the collateral security for the project;
  - 2) Machinery and equipment brought into the state from another state; and
  - 3) Cash used in the project provided by the principal(s), stockholders, or other investors.
- b) The following funds will not be considered leverage:
- 1) Funds expended by the business prior to the date of the Department's letter to the applicant committing to the loan;
  - 2) Existing in-state equipment, land, buildings, furnishings, or inventory (already owned and being utilized);
  - 3) Post-project costs (such as operational expenses);
  - 4) Debt refinancing, lines of credit, or other unexpended available funds; and
  - 5) Other funds provided by the Department.

**Section 545.255 Loan Agreement**

The loan agreement will be developed for each business borrower that receives loan funds. The loan agreement will contain, at a minimum, the following items:

- a) Definition Section -- Defining the key terms used in the agreement.
- b) Loan Conditions -- Including statements relating to representations and warranties, evidence of other financing, note, collateral, corporate or partnership document, and legal matters.
- c) Borrower Representations and Warranties -- Concerning form of ownership, authorization of agreement, binding effect, accuracy of application, collateral, accuracy of financial statements, absence of loan defaults, absence of litigation, compliance with ERISA laws, absence of tax delinquencies, and possession of appropriate licenses and permits.
- d) Covenants and Continuing Agreements -- To expend public funds in accordance with approved budget, keep detailed project records, furnish proof that its corporate or partnership existence is in full effect, pay all applicable taxes and required insurance, prohibit loans to officer/directors/stockholders, and comply with all applicable state and federal laws.
- e) Default Provisions -- Listing the conditions under which the borrower would be in default of the agreement.
- f) Use of Loan Proceeds -- Briefly describing the business project for which the loan is being made and the exact use of loan funds.
- g) Other Financing of Borrower -- Information on primary lender, the amount of the lender's loan, terms of this loan, etc.
- h) Labor Compliance Requirements -- As appropriate, including equal opportunity employment, minimum wage, and other state or federal labor standards.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- i) Other -- Such other terms and conditions as the Department feels, in its sole discretion, are necessary to adequately secure or document the loan, including, but not limited to: key man life insurance, liens and UCC filings.

**Section 545.260 Loan Terms**

- a) Loans primarily utilized for machinery and equipment will generally vary from 7 to 10 years; loans primarily intended for short term working capital needs will normally extend for 3 to 5 years.
- b) Working capital loans may require personal guarantees from all individuals owning or controlling 20 percent or more of the applicant company. For small companies without major identifiable principals (e.g., no one owns 20 percent or more of the company), the amount of the loan may be limited to 80 percent of the value of the fixed assets securing the loan. Asset-based loans not secured by a lien on the fixed asset may require personal guarantees. The Department shall require personal guarantees in any loan transaction in which the loan to evaluated collateral ratio is less than one to one.
- c) Monthly installments shall be due and payable to the Department at a time specified in the loan agreement.

**Section 545.265 Loan Security**

*Financial assistance shall be secured by first or second mortgage positions on real or personal property, by royalty payments, by personal notes or guarantees, or by any other security satisfactory to the Department to secure repayment, if required, by the financial assistance agreement (Section 3002(b) of the Act). Security for Department loans may include, but is not limited to, any or all of the following:*

- a) First or second lien security interest in favor of the Department on all personal property of the borrower.
- b) First or second position real estate mortgage in favor of the Department on real estate of the borrower.
- c) Personal guarantees and/or corporate guarantees in the amount of the loan.
- d) Irrevocable letter of credit.
- e) First or second security interest in negotiable securities of the borrower or business principle owners.

**Section 545.270 Maintenance and Insurance of Property**

- a) The borrower shall at all times maintain the property provided as security for the loan in such condition and repair as a reasonably prudent person would hold full title to the property.
- b) The borrower shall maintain, during the term of the loan, hazard (e.g., tornado, hail, acts of God) and fire insurance policies at least covering the amount of the loan and extended coverage for all



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

such other hazards issued by an insurance company authorized to do business in the State of Illinois, as evidenced by a certificate of authority issued by the Illinois Department of Insurance pursuant to the Insurance Code of 1937 (Ill. Rev. Stat. 1987, ch. 73, pars. 613 et seq.), with an endorsement naming the Department as loss payee.

c) The borrower shall, if at any time during the life of the loan the business's property is declared to be within a flood hazard area, purchase federal flood insurance if available. Such insurance shall be equal to the amount of the loan.

d) The borrower shall maintain liability and workers' compensation insurance. The borrower shall provide written notice to the Department of any public hearing or meeting before any administrative or other public agency which may, in any manner, affect the chattel, personal property or real estate securing the loan.

**Section 545.275 Administrative Requirements**

a) Farmland Preservation (if applicable) -- The borrower shall certify that the proposed business project is compatible with established state policy regarding farmland preservation pursuant to the Farmland Preservation Act (Ill. Rev. Stat. 1987, ch. 5, par. 1301 et seq.).

b) Nondiscrimination -- The borrower shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act (Ill. Rev. Stat. 1987, ch. 68, pars. 1-101 et seq.).

c) Financial Management -- The borrower's financial management system shall be structured under the Accounting Standards of the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (AICPA) (September 19, 1987) to maintain control and accountability over the loan funds.

d) Reporting -- The borrower shall provide, no more often than semi-annually, information and reports on job creation/retention, production levels and company financial statements.

e) Department Monitoring and Evaluation -- Borrowers must permit any agent authorized by the Department, upon presentation of credentials, to have full access to and the right to

1) inspect, examine or audit any documents, papers, and records involving transactions related to a loan from the Department, including making copies thereof, and

2) inspect or appraise any of the borrower's business assets.

f) Authorizations -- The borrower shall, upon written request by the Department issue any necessary authorization to the appropriate federal, state or local authority or private person or entity for the release of information concerning a business or business project financed under the provisions of this Act, with the information requested to include, but not be limited to, financial reports, returns, or records relating to that business or business project,

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

(Section 1004(i) of the Act).

g) Confidentiality -- *Documentary materials or data, consisting of trade secrets, commercial or financial information regarding the operation of any enterprise conducted by an applicant applying for funding under this Act, or regarding the competitive position of such enterprise in a particular field of endeavor, shall be deemed to be confidential and shall not be deemed public records (Section 4002 of the Act).*

**Section 545.280 Audits**

a) The borrower shall be responsible for securing an audit of all loan records and such audit must be performed by an independent certified public accountant, licensed by authority of the State of Illinois pursuant to the Illinois Public Accounting Act (Ill. Rev. Stat. 1987, ch. 111, pars. 5500 et seq.). The audit must be conducted in accordance with generally accepted auditing standards adopted by the AICPA (1989).

b) The borrower shall work cooperatively with the audit firm selected; actively work with both the audit firm and the Department to resolve any and all audit findings; and work cooperatively with the Department's staff in preparing for, conducting, and resolving audits.

c) The Department reserves the right to conduct special audits of funds expended under Department loans, at any time during normal working hours.

d) Any independent public accounting firm that provides consultant services to a borrower is prohibited from conducting an audit of that borrower for the period during which services were rendered.

**Section 545.285 Termination of Loan**

A loan shall be terminated for the following reasons:

a) Termination Due to Loss of Funding -- In the absence of state funding for a specific year, all loans for that year will be terminated in full. In the event of a partial loss of state funding, the Department will make proportionate cuts to all Recipients.

b) Termination for Cause -- If the Department determines that the borrower has failed to comply with the terms and conditions of the loan, the Department shall terminate the loan in whole, or in part, in accordance with Section 545.290, at any time before the date of completion.

c) Termination by Agreement -- The Department and the borrower shall terminate the loan in whole, or in part, when the Department and the borrower agree that the continuation of the project objectives would not produce beneficial results commensurate with the future expenditures of funds.

**Section 545.290 Events of Default**

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

a) The entire unpaid principal of the loan and the interest accrued thereon, shall become and be immediately due and payable upon the written demand of the Department, without any other notice or demand of any kind or any presentment of protest, if any one of the following events (hereinafter an "event of default") shall occur and be continuing at the time of such demand, whether voluntarily or involuntarily, or without limitation occurring or brought about by operation of law or pursuant to or in compliance with any judgement, decree or order of any court or any order:

- 1) Non-payment of loan -- If the borrower shall fail to make payment when due of any installment of principal on the loan, or interest accrued thereon and if the failure to make payment shall remain unremedied for fifteen (15) calendar days.
- 2) Non-payment of Other Indebtedness -- If default shall be made in the payment when due of any installment of principal or of interest on any of the borrower's other indebtedness (any creditor the borrower owes) and if such default shall remain unremedied for fifteen (15) calendar days.
- 3) Incorrect Representation or Warranty -- If any representation or warranty contained in, or made in connection with the execution and delivery of, the loan agreement, or in any certificate furnished pursuant hereto, shall prove to have been incorrect.
- 4) Default in Covenants -- If the borrower shall default in the performance of any other term, and such default shall continue unremedied for thirty (30) calendar days after, either:
  - A) It becomes known to an executive officer of the borrower; or
  - B) Written notice thereof shall have been given to the borrower by the Department.

5) Voluntary Insolvency -- If the borrower shall cease to pay its debts as they mature or shall voluntarily file a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator of its assets or to effect a repayment plan with creditors, or shall be adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

6) Involuntary Insolvency -- If an involuntary petition shall be filed against the borrower under any bankruptcy or insolvency law or seeking the reorganization of or the appointment of any receiver, trustee or liquidator for the borrower, or the property of the borrower, or a writ or warrant of attachment shall be issued against the property of the borrower and such petition shall not be dismissed or such writ or warrant of attachment shall not be released or bonded within thirty (30) calendar days after filing or levy.

7) Judgements -- If any final judgement for the payment of money that is not fully covered by liability insurance shall be rendered against the borrower, and within thirty (30) calendar days, shall not be discharged, or an appeal therefrom taken and execution thereon effectively stayed pending such appeal, and, if

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

such judgement be affirmed on such appeal, the same shall not be discharged within thirty (30) calendar days.

b) Notice of Default -- The borrower agrees to give written notice to the Department of any event, within fifteen (15) calendar days of the event, which constitutes an event of default.

c) Deferrals -- The Department may make deferrals based upon a case by case review of the borrower's financial statements and projections to determine if the borrower anticipates it may be able to make payments at a future date. The Department's review shall be based on the factors listed in Sections 545.230(g), (h), (j) and (k).

## SUBPART D: BUSINESS MODERNIZATION ASSESSMENT GRANT PROGRAM

## Section 545.310 Program Purpose and Mission

The purpose of the Business Modernization Assessment Grant program is to provide Grants to small, medium-size and mature firms to help them improve quality and delivery and reduce costs of their business to meet market demands and thereby create or retain jobs in the state. Competitive Base Analyses (diagnosis of the firm's problems which will suggest the possible role of manufacturing technology in the solution) and Productivity Improvement Services projects (selection of the appropriate type and level of technology and implementation of the technology according to short and long range strategic plans) can serve to:

- a) Assist companies in relating business needs to technological needs, as a part of continual corporate analysis and adaptation to changing markets and competition, to assure continued operation of the Illinois based firm.
- b) Identify productivity improvement or cost reduction opportunities and thus solve particular problems facing the company and its employees.
- c) Assist companies in learning about and selecting new/improved systems required to improve product quality and delivery time and reduce costs of the company's operation.
- d) Assure successful integration of human development and work force training with implementation of technological modernization.
- e) Research, analyze and evaluate the cost/benefit and appropriateness of technology prior to its implementation and thus minimize risks involved in implementing modern systems and new equipment.

## Section 545.315 Definitions

"Application" -- A request for program funds including the required statistical and narrative information and attachments.

"Department" -- The Illinois Department of Commerce and Community Affairs.

"Grant" -- Funds provided from the Department through this program.



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

"Grant Agreement" -- Contractual agreement between the Department and Recipient, which includes the scope of work to be provided, the budget, and all terms and conditions of the contract.

"Program" -- The Business Modernization Assessment Grant Program.

"Project" -- Any activity or activities funded under this program.

"Recipient" -- Any eligible company receiving services under this program.

## Section 545.320 Eligible Grant Categories

a) "Competitive Base Analysis" means a short term consulting evaluation of the existing and potential competitive (productivity and profitability) circumstances of a firm or group of firms in key functional areas of the firm. The analysis shall be developed through a combination of plant walk-throughs, statistical data collection, review of available published literature, and extensive interviewing of key personnel, customers, competitors, and other experts who bring perspective to the underlying issues.

1) General overview -- The analysis shall result in a written report that shall be submitted to the company and which contains as applicable:

A) Basic competitive information: the firm's current business strategies, manufacturing technology and process, operations management, market base and market niche, organizational resources, human resources and general capital and financial condition;

B) Cost based analysis: a functional overview of the manufacturing enterprise and costs associated with each function to determine if associated costs appear abnormally high, to determine which costs are non-value added expenses and which manufacturing functions are high cost areas;

C) Industrial engineering analysis: an overall evaluation of the production environment, targeting specific areas that are related to productivity including plant and equipment configuration, work scheduling techniques, machine and worker productivity rates, inventory systems, production control techniques, shop floor information reporting, quality control efforts.

2) Problem and opportunity identification -- Identification and analysis of primary productivity or profitability problems in each of the key functional areas and factors which the firm must address for continuous success in the marketplace.

3) Baseline information -- Current year financial and production statistics and data to serve as a baseline for measuring productivity improvements.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

4) Problem resolution briefing -- The analysis shall include a written report which will be provided to the company and the Department, discussing:

A) Short term solutions -- identification of immediate, demonstrable, low cost measures, including short term and remedial measures, for each of the functional areas requiring improvement.

B) Longer term follow-on strategies --

a specific prioritized list of appropriate higher cost, longer term technological innovations in operations management, manufacturing technology, or capital equipment and identification of two or more private vendors, consultants, trade associations, etc., qualified to provide recommended services.

C) If appropriate, proposals or other documentation for the next steps in the company's modernization plans.

D) Referrals to public sources of assistance -- for example, Small Business Development Centers for general business assistance, community colleges for employee training, universities and Technology Centers for product commercialization research and development, and state sources of financing for retooling and modernization implementation.

b) "Productivity Improvement Services" means problem solving services including the analysis, design, planning, introduction, and assistance in implementation of appropriate technological innovations to improve productivity and profitability (and thus, competitiveness). These problem solving services could serve one firm or a group of firms which are aware of one or more particular productivity issues that must be addressed, generally as the result of a Competitive Base Analysis. Productivity Improvement Services shall include any or all of the following, as applicable:

1) Technology feasibility studies -- Identification of manufacturing technologies and processes in place at the facility and identification of exemplary strategies currently in use in comparable industries or companies, for example, machinery, equipment, manufacturing processes or designs, and operational or organizational procedures.

2) Operations management services -- Assistance in improving organization or operations management procedures such as production scheduling and control, material requirements management, capacity requirements planning, quality control systems, etc. This would generally include engaging appropriate consultants with expertise in the procedures and techniques selected, and education and orientation of the company's management and project team to the key principles, technical knowledge, or skills required to implement the management procedures.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 3) Engineering/design services -- Assistance in altering, automating or integrating manufacturing technologies in design and engineering; fabrication/machining and assembly; and material handling, inspection and testing, etc. This could include general and specialized engineering consultation audits; assessments of manufacturing technologies in place at the facility and technologies currently available in the marketplace; and technical and engineering assistance with identification, evaluation, selection, installation, and performance testing of the altered manufacturing technology.
- 4) Equipment acquisition -- Assistance in selecting capital investments for machinery and equipment. This would generally include assessment of manufacturing equipment currently available, assistance with identification of available vendors, and review of vendor support and warranties; development of specific engineering and operational requirements for the equipment; and evaluation of the expected performance of the product.
- 5) Network or group services -- Industrial consulting and engineering services to a group of similar firms that serves the purposes of the firms that are involved. Such activities will vary as the priorities and opportunities of those firms vary and could include multifirm strategic planning, joint industrial engineering services, cooperative marketing networks, common buying or procurement networks, sectoral quality assurance, or similar activities.

## Section 545.325 Eligible Businesses

- a) Small, medium-sized and mature firms or third parties applying on their behalf are eligible to apply for and receive funds under the provisions of this program, provided that:
  - 1) the firm is located in Illinois or the benefit of the program serves an Illinois based plant or branch and
  - 2) the firm (or its predecessor organization) has been in operation for two years or more or has a meaningful operating history.
- b) To be eligible, a firm must show a need for Productivity Improvement Services or Competitive Base Analysis because it:
  - 1) Has the potential to "Improve Productivity" such as
    - A) reduce high warranty costs, high rework and modification costs, or repeated machine down-time or
    - B) improve production to a level (output per worker, sales per employee, etc.) that equals or exceeds the average or norms for the industry; or
  - 2) Has the potential to reverse an actual or expected "Decline in Production" which is a decline in the number of hours of employment and a decline in sales value or quantity, in comparison with previous monthly, quarterly, or annual statistics

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- for the same period of the previous year for reasons such as
- A) steady, long term structural deterioration of the industry,
  - B) success of foreign competition in capturing domestic and international markets, etc., or
  - C) limited opportunity for market share which is directly attributable to industry located outside of the state or outside of the nation; or
- 3) Has a need or potential to "Improve Competitive Advantage"
    - A) by improving product cost, design, quality, or cycle time to meet a consumer demand for which the current product is not competitive,
    - B) because the company is required to improve productivity to meet quality standards of its primary customers, or
    - C) because the company requires greater flexibility in its manufacturing process to ease product changes and to assure sensitivity to customer needs.
  - c) No firm shall be excluded from participating in this program by reason of amount of sales or income or number of employees. If funds are available, the Department may target assistance through this program, based on the following factors: medium-sized (50 to 500 employees) businesses in major industrial groups including: firms in industries in which Illinois is an acknowledged leader, to assist them in maintaining their dominant national market position; Illinois' core industries, those industries concentrated in the state and employing 20,000 or more, due to the economic benefits created by their continued operation in the state; and firms in industries which have suffered the greatest loss in employment in recent years, which have the potential to regain lost markets.

## Section 545.330 Application Requirements

Applications for Grants shall be submitted by firms or may be submitted by second parties upon specific written approval of a firm on forms provided by the Department. Any page with proprietary information, trade secrets, or other confidential information must be marked "Confidential". Applications shall include the following:

- a) Applicant information shall include the following, if applicable:
  - 1) Applicant Cover Sheet -- The Applicant's name, address, and telephone number, and the names of the Applicant's Chief Executive Officer or other authorized officer, and a contact person.
  - 2) Business Plan -- If the Applicant has prepared a business plan.
  - 3) Applicant History -- A very brief but thorough (one page) description of the Applicant's business including
    - A) type of operation, year founded, organizational structure, and significant events in the company's history.
    - B) number, location and nature of manufacturing or production and distribution or sales facilities, domestic (in-state),



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- foreign (out-of-state), and alien (outside the U.S.).
- 4) Applicant Management and Capabilities -- A listing of officers, directors and management, their positions (titles and/or responsibility for operation of the company), and percentage of ownership.
  - 5) Markets and Customer Base --
    - A) a description of the types and locations of markets to which the Applicant sells its products or services and recent trends in sales;
    - B) a description of the goods and services produced by the Applicant in Illinois; any significant changes in the products or goods produced by the Applicant;
    - C) identification of which of the articles produced are being adversely affected; three year trends in production and sales quantity, unit price, unit volume and gross margins; and two year projections in the same categories;
  - 6) Employees -- Number and types of production, management and sales employees.
  - 7) Corporate Financial Statements --
    - A) historical statements (or equivalent federal tax forms) for the past one to three years, including Profit and Loss Statements, Balance Sheets, Cash Flow Statements, and
    - B) no more than two years of projections of the Profit and Loss Statements, Balance sheets, and Cash Flow Statements. Audited financial statements are preferred; prepared financial statements are the minimum that are acceptable.
  - b) A statement and description of the project for which funds are being sought as applicable:
    - 1) Justification for Productivity Improvement Services or Competitive Base Analysis --
      - A) an indication of the kind of problem(s) or issues the Applicant is currently facing (as listed in Section 545.325(b)),
      - B) a description of the Applicant's past and present efforts to analyze and improve its competitive condition and productivity structure.
    - 2) Justification of Need for State Financial Assistance --
      - A) a narrative justification of need for improvement in productivity/competitiveness such as to "Improve Productivity," reverse a "Decline in Production" or "Improve Competitive Advantage," and
      - B) a demonstration that adequate resources are not available internally, for example, by describing what will be done that would not be done if the Grant were not available.
    - 3) Benefits Expected -- A description of the employment and revenue benefits expected to be created as a result of the project, including number of jobs created or retained, increased sales or decreased expenses, or change in level of production.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 4) Project Description --
  - A) a description of the objective(s) of the project, the scope of work and major activities to be performed to complete the project;
  - B) a description of the technology(ies), equipment, or procedure(s) to be analyzed and/or corrected.
- 5) Identification of the Consultant --
  - A) The name and qualifications of the consultant, and consultant organization and if more than one consultant is to be involved, the responsibilities of each in completing the project,
  - B) the total consultant hours to be provided and a time schedule listing start and end dates and key benchmarks,
  - C) consultant and client responsibilities during the project to assure its success,
  - D) a copy of the consultant's proposal for the project, and
  - E) the anticipated charges, expenses, basis of charges (consultant cost per hour and per day) and terms of payment.
- 6) Budget -- Indicate the costs of the Productivity Improvement Services or Competitive Base Analysis, and the source of funds to finance the costs. The budget may be submitted on forms provided by the Department and shall include information such as the cost of contractual services, the cost of materials and supplies, any travel costs, etc.
- 7) Economic Development/Competitiveness Results -- A statement of the potential results and improvements expected which shall include Jobs, Level of Employment, and Revenue and Expenses; and may include Productivity, Effectiveness, Efficiency, or General Capacity.
- 8) Labor/Management Relations -- If the purpose or result of the study is subject to a collective bargaining agreement, evidence of participation/sign off by appropriate bargaining agents.
- 9) Project Deliverables -- A description of the nature of services and/or plans to be prepared and a confirmation of the Applicant's awareness and understanding of reports and reporting responsibilities under the program.
- 10) Past Improvements or Assistance Received -- The Applicant's efforts to analyze and improve its competitive condition and productivity structure over the last two years.
- 11) Certifications -- Certifications by the Applicant regarding its intent to comply with applicable laws and regulations including nondiscrimination, conviction of bribery, interest of public officials, historic preservation, bid rigging, student loans, etc.

## Section 545.335 Applicant Process

- a) Technical Assistance -- Upon reasonable request, representatives of

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- the Department shall provide assistance to Applicants in completing the application and budget.
- b) On-Site Inspection -- During the application process, the Department shall undertake an on-site visit if the Department cannot verify application information through other means. Applicants shall provide representatives of the Department access to the Applicant's place of business and site where the Productivity Improvement Services or Competitive Base Analysis will be conducted. The Department shall provide reasonable prior notice to the Applicant to gain such access and shall request access only during normal business hours.
- c) Submittal of Application -- Applications may be submitted by an eligible business or group of similar eligible businesses. In addition, applications may be submitted by a trade association, non-profit organization, educational institution, research organization, or consultant organization on behalf of an eligible business or group of similar eligible businesses.
- d) Additional Information -- During the evaluation process, the Department reserves the right, where it may serve the Department's best interests, to request additional information or clarification from the Applicant, or to allow corrections of errors or omissions.
- e) Application Screening -- The Department shall screen all applications to determine that all requirements of the application package have been addressed. Applicants will be notified of deficiencies in applications and given an opportunity to correct such deficiencies through resubmission.
- f) Review -- Complete applications will be reviewed and evaluated by Department staff. This review and evaluation process will be completed within 60 days of the receipt of a complete application.
- g) Notifications -- Subsequent to the evaluation process during which applications are considered for funding, each Applicant will be notified in writing of the Department's approval or disapproval.
- h) Filing -- Approved applications will be maintained on file by the Department. Confidential information will be marked as such and secured.

**Section 545.340 Application Evaluation Standards**

Applications will be comparatively ranked for funding consideration. The nature and purpose of the Productivity Improvement Services or Competitive Base Analysis will determine the extent to which each of the following program evaluation criteria will apply and the weight to be given by the Department to each:

- a) Evidence of Productivity/Competitiveness Improvement Potential -- Each application will be reviewed to determine that the proposed activities and services could be expected to result in the project impact as set out in subsection (c).
- b) Evidence of Need for Public Funds -- The application must provide evidence that the project could not or would not be carried out

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- without state financial assistance from this program.
- c) Potential Project Impact -- The application will be reviewed to determine the extent to which the proposed activities are projected to result in a measurable economic benefit to the state such as jobs created or retained and anticipated productivity improvements at the firm.
- d) Management Cooperation -- The firm's capacity for implementation of project results.
- e) Costs -- The Applicant must demonstrate that the project will involve the purchase of services and expenses directly related to Productivity Improvement Services or Competitive Base Analysis in a proper amount and percent share.
- f) Application Verification -- A verification of submitted application information, either through a field visit or desk review, will be undertaken.
- g) Project Implementation Readiness -- The Applicant must demonstrate project readiness, including a time schedule for immediate project initiation, and written cost estimates from consultants, suppliers, etc., which support project costs.
- h) Previous Case History -- Case performance of the Applicant under previous departmental or similar programs, if applicable (e.g., success in previous projects and the level of compliance with previous Grant agreements).
- i) Labor/Management Relations -- The application must show the extent of cooperation of the firm's management and employees and extent to which interests of employees are served.

**Section 545.345 Selection Criteria**

- a) Grant awards will be made on a monthly basis until all available funds are expended. A set-aside fund may be established in order to take action on those applications requiring immediate attention or quarterly allocations may be established to assure year-round availability. Quarterly allocations and set-asides, if any, shall be based on the previous demand for funds and likely grant applications (based on inquiries made to the Department) and shall be changed to allow for the type, number, and quality of requests received throughout the year.
- b) Those Applicants that advance the purposes of the Act and comply with Section 545.340 shall be selected for an award of a Grant. The level of the Grant award will be determined in relation to:
- 1) Level of expertise of the consultant or firm undertaking the feasibility study or competitiveness assessment.
  - 2) Likelihood and extent that the work will result in substantial improvement in applicant's operation, and
  - 3) Determination of whether and the extent that the improvement will result in creation or retention of jobs (Section 3004(c)(i) through (iii) of the Act) and the number of jobs impacted.



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- c) A Grant ceiling of 50 percent of project costs has been established by the Act, subject to waiver by the Director. The waiver will be documented and kept on file by the Department. In determining whether to waive the funding limitation, the Director shall consider the following:

- 1) The Applicant demonstrates to the Department through a financial analysis that the 50 percent funding limitation would prohibit an otherwise approved project, in accordance with Section 545.340, from occurring;
- 2) The Applicant demonstrates an extraordinary community benefit such as
  - A) to determine feasibility of a corporate restructuring or corporate turnaround or to prevent a bona fide corporate relocation to another state,
  - B) project affects a substantial number of employees, or
  - C) community in which the project is located is distressed or has limited economic development opportunities; or
- 3) The total request for State funds to serve a specific eligible business does not exceed \$15,000 and
  - A) the purpose of the request is to conduct a Competitive Base Analysis; or
  - B) the work to be performed is undertaken by a public or proprietary institution of higher education, a state Technology Center, a Small Business Development Center, trade association, or a non-profit organization.

**Section 545.350 Grant Limitations**

- a) Eligible Costs -- The costs of an Applicant incurred directly as a Productivity Improvement Services or Competitive Base Analysis expense, including contractual services; consultant fees; commodities; training, materials, and supplies; travel and other project related direct expenses necessitated by the Productivity Improvement Services or Competitive Base Analysis are eligible costs which may be reimbursed with Grant proceeds. Grant funds may not be used to purchase tangible or intangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit.
- b) Competitive Base Analysis Grant Amounts -- The Department shall approve Grants in amounts necessary to pay a percent share of Eligible Costs as defined in subsection (a), incurred by or on behalf of an eligible business for a Competitive Base Analysis up to a maximum of \$15,000, unless the Director waives the percent share or maximum amount in accordance with Section 545.345(c).
- c) Productivity Improvement Services Grant Amounts -- The Department shall approve Grants in amounts necessary to pay up to 50 percent of Eligible Costs, as defined in subsection (a) incurred by or on behalf of an eligible business for Productivity Improvement Services, up to a

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

maximum of \$100,000, unless the Director waives the percent share or maximum amount in accordance with Section 545.345(c).

- d) Cost Share Limitations -- The Department reserves the right to limit its share of project costs, for example, the Department's share of consultant cost per hour or consultant cost per day and to limit to no less than 25 percent of the amount of Recipient's share of indirect and in-kind expenses of the project to be considered in the computation of matching share.

**Section 545.355 Administrative Standards for Grant Recipients**

- a) Grant Agreement -- The Department will have discussions with the Applicant as needed to negotiate the Grant Agreement. The Grant Agreement will set out the scope of work of the grant, the terms and conditions of the Grant, and the period of the Grant Agreement.
- b) Grant Period -- Any Productivity Improvement Services or Competitive Base Analysis Grant shall have period of completion as determined by the Department.
- c) Nondiscrimination -- The Recipient shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act (Ill. Rev. Stat. 1989, ch. 68, pars. 1-101 et seq.).
- d) Complaint Process -- In the event of a Recipient complaint, the Department will follow the procedures outlined in 47 Ill. Adm. Code 10 (Review and Appeal Procedures).
- e) Confidentiality -- Any proprietary documentary materials or data received by the Department, consisting of trade secrets, or commercial or financial information regarding the operation of any enterprise conducted by an Applicant applying for funding under this Act, or regarding the competitive position of such enterprise in a particular field of endeavor, shall be deemed to be confidential and shall not be deemed public records.
- f) Fund Availability -- Payments pursuant to a grant are subject to the availability of funds appropriated to the Department by the Illinois General Assembly. Grant funds must be expended or obligated within the period of the Grant Agreement and liquidated within the period of time in accordance with the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1989, ch. 127, pars. 2301 et seq.).
- g) Disbursement of Funds -- Upon approval of an application for a Grant and execution of a Grant agreement, and subject to the provisions of this program, funds to be provided by the Department to the Applicant may be immediately disbursed, may be disbursed based on work in progress, and may be disbursed subject to receipt of final or interim progress reports. Payments to the Recipient are subject to the initiation of an invoice voucher and receipt of an expenditure summary or documentation of expenses. Examples of the categories of disbursements follow:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 1) Advance Payment - Applicant is a governmental unit or nonprofit entity.
- 2) Work in Progress Payment - Project requires reimbursement to facilitate cash flow, project term is more than one month or more than one report is to be submitted.
- 3) Single Payment - Project end report is received prior to disbursement by the Department.

h) Financial Management -- The Recipient is accountable for funds received under this grant and shall maintain effective control and accountability over all funds and other assets under the grant. The Recipient shall keep records which detail and accurately document the Recipient's expenditures of grant funds for a period of two years from the end of the Grant Agreement.

i) Interest on Grant Funds -- In accordance with Section 10 of the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1989, ch. 127, par. 2310), all interest earned on funds held by the Recipient under the Grant shall become part of the Grant when earned. Any interest earned under the Grant, and not expended as Grant principal during the term of the Grant, shall be returned to the Department.

j) Overpayments and Recovery of Funds -- If the grant Recipient expends Grant funds contrary to the provision of the Grant agreement, such action shall require the repayment of those funds if the expenditure violated the Recipient's assurances or the statutory provisions. The Department shall also require repayment of Recipient expenditures that do not conform to the provisions of the Grant Agreement but do not violate statutory provisions. An overpayment of grant funds (unliquidated balance) shall promptly be refunded to the Department which shall be not later than 45 days after the expiration of the Grant Agreement. In addition, the Recipient agrees to repay the Department for any funds that are determined by the Department to have been spent in violation of the Grant agreement.

k) Department Monitoring and Evaluation -- Recipients and their subcontractors, if any, must permit any agent authorized by the Department, upon presentation of credentials to have full access to and the right to examine any documents, papers, and records of the Recipient involving transactions related to a Grant from the Department.

l) Special Audits -- The Department reserves the right to conduct special audits at any time during normal working hours, of funds expended under the program.

## Section 545.360 Project Reporting

a) General Reports -- The Department reserves the right to require interim reports to document progress in accomplishing the objectives of a Grant. The Recipient shall provide, within 30 calendar days of a request, such interim reports on progress as may be required by the Department including consultants reports, narrative analyses, reports

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

on job creation/retention and production level improvements and summaries of expenditures. Examples of circumstances in which interim progress reports shall be required include, but are not limited to:

- 1) applicant has failed to provide the report required by the Grant Agreement;
- 2) reports to address inquiries from Department auditors, and;
- 3) reports requested by the Department for year end budget and program planning purposes.

b) Narrative Report -- The Recipient will provide to the Department within 30 calendar days of the end of the project, a written copy of the documents and/or reports of its Competitive Base Analysis or Productivity Improvement Services Grant including any consultant digest report or letter report.

c) Company Evaluation and Analysis -- Upon review of the narrative report, the business receiving assistance shall determine and report to the Department within 30 calendar days of the end of the Grant Agreement:

- 1) Whether the consultant's cost and time estimates were accurate and whether the assignment was completed and meets the expectations of the business.
- 2) Whether the analysis adequately identifies and diagnoses problems, and provides recommendations for corrective action.
- 3) Whether the plan contains a sound and detailed strategy for action to be undertaken to enhance the business's success.
- 4) If appropriate, the extent to which the recommendations were or will be installed and the timetable for such action.
- 5) Whether a reasonable prospect exists that the implementation of the plan will allow the firm to become competitive, profitable and successful and create or retain jobs in the state.

d) Status Report -- The Recipient of project services shall provide the Department with a narrative statistical progress report on the status of job creation/retention, production level improvements, and revenues and expenses at the Recipient's plant/operation. The report shall be due 30 calendar days after the one-year anniversary date of the signature of the Grant. Additionally, any Recipient of a Productivity Improvement Services Grant shall provide a similar status report due 30 calendar days after the two-year anniversary date of the signature of the Grant. The Productivity Status Report shall include, but not be limited to:

- 1) Job Creation/Retention -- The Recipient must provide information on the net job creation/retention which has occurred as a result of the project, including number and types of jobs and hours of employment.
- 2) Revenue and Expense Measures -- The Recipient must show the financial benefit to the firm, which shall be determined by an increase in revenues or decrease in expenses.
- 3) Production Level Improvements -- The Recipient must report the extent to which the project (as opposed to outside factors) has



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

changed production levels, quality of output, timeliness of delivery, or other general measures of increased capacity. This shall include a review of: productivity, effectiveness, efficiency, general capacity.

- e) Expenditure and Match Summary -- Each Recipient funded shall maintain and provide to the Department appropriate and accurate documents and records of actual Grant related obligations and expenses and appropriate documents and records (such as books of accounts, warrants, receipts for payment, reports of in-kind expenditures, time sheets and bank deposit slips) which detail the Recipient's expenditure of Grant funds and match funds.

**Section 545.365 Modification, Suspension and Termination of Grant**

- a) Modification and Amendment of the Grant -- The Grant Award is subject to revision as follows:

- 1) Modifications by Operation of Law -- The Grant Award is subject to such modifications as may be required by changes in state law or regulations. Any such required modification shall be incorporated into and made a part of the Grant within the provisions of the Illinois Grant Funds Recovery Act (Ill. Rev. Stat. 1987 and 1988 Supp., ch. 127, pars. 2301 et seq.). The Department shall notify in writing the Recipient of any amendment to such regulations.

- 2) Modifications in Budget -- Recipients requests for budget variations in the amount or line item costs shall be in writing by registered letter and shall give justifications for the requested variations. The Department may approve modification requests, if, in the Department's sole determination, such is necessary to achieve program objectives. Any changes in cost categories or line items shall not alter the activities or deliverables for the project. If the Department approves the modification request, the Recipient will be notified in writing of the change and effective date. Such determinations shall be based on a review of the data submitted pursuant to Section 545.340.

- 3) Other Modifications by Department or Recipient -- If either the Department or the Recipient desires to modify the terms of the Grant Award other than as set forth in subsection (a)(1) and (2) above, written notice of the proposed modification shall be given to the other party. No modification shall take effect unless agreed to in writing by both the Department and the Recipient.

- b) Suspension --

- 1) If the Department determines that a Recipient has failed to perform the terms and conditions of the scope of work of the project, then the Department shall, after notice and an opportunity to correct has been provided to the Recipient, suspend the Grant and withhold further payments until the Grant

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

is terminated, or the Recipient's failure has been corrected. 2) The Department will determine that a Recipient has failed to faithfully perform the terms and conditions of the scope of work of the project when:

- A) The Department has notified the Recipient in writing of the existence of circumstances such as repeated failure to submit required reports, misapplication of Grant funds, evidence of fraud and abuse, repeated failure to meet performance timelines or standards, or failure to resolve negotiated points of the agreement; and
- B) The Recipient fails to develop and implement a corrective action plan within 30 calendar days of the Department's notice.

- c) Termination -- A Grant shall be terminated for any of the following reasons:

- 1) Termination Due to Loss of Funding -- In the absence of state funding for a specific year, all Grants for the year will be terminated in full. In the event of a partial loss of state funding, the Department will make proportionate cuts to all Recipients.

- 2) Termination for Cause -- If the Department determines that the Recipient has failed to comply with the terms and conditions of the Grant Agreement, the Department shall terminate the Grant in whole, or in part, at any time before the date of completion.

- 3) Termination by Agreement -- The Department and the Recipient shall terminate the Grant in whole, or in part, when the Department and the Recipient agree that the continuation of the project objectives would not produce beneficial results commensurate with the future expenditures of funds.

## SUBPART E: DEVELOPMENT CORPORATION PROGRAM

**Section 545.410 Program Purpose**

The purpose of the Development Corporation Program is to provide qualified investments, loans or grants to development credit corporations, financial intermediaries or other entities whose purpose includes financing, promoting or encouraging commercialization, adoption or implementation of advanced technologies, processes or products (Section 3001(iv) of the Act).

**Section 545.420 Definitions**

"Business Project" means any specific economic development activity of a commercial, industrial, manufacturing, agricultural, scientific, financial, service or other nature, which is expected to yield an increase in jobs or to result in the retention of jobs or an improvement in "Production Efficiency" (Section 1003(c) of the Act).

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

"Business Project Expense" includes costs incurred for research and development; amortizable organizational costs; working capital financing, the purchase or lease of machinery and equipment and tooling, or the lease or purchase of real property, including construction, renovation, or leasehold improvements, but does not include refinancing debt (Section 1003(b) of the Act).

"Capitalize" means invest, purchase stock or purchase qualified security investments in a Development Corporation or provide equity funding for a revolving loan fund in a Development Corporation.

"Capitalization" means the activity, funding or process used to capitalize a Development Corporation.

"Development Corporation" means any public or private Development Corporation whose mission or mandate includes promoting, encouraging or financing business modernization and retooling or adoption and implementation of new production equipment, process or technologies, including banks and bank holding companies, community development corporations, state development credit corporations, regional development authorities authorized to do business by an Act of this state, loan partnerships, loan consortiums, or other financial intermediary.

"Financial Assistance" means a loan or a grant or the purchase of qualified securities or other means whereby financial aid is made to or on behalf of a development corporation (Section 1003(f) of the Act).

"Qualified Security Investment" means any stock, convertible security, treasury stock, limited partnership interest, certificate of interest or participation in any profit sharing agreement, reorganization certificate or subscription, transferable share, investment contract, certificate of interest or participation in a patent or application or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or right to subscribe to or purchase any of the foregoing, but not including any instrument which contains voting rights or which can be converted to contain voting rights in the possession of the Department (Section 1003(i) of the Act).

## Section 545.430 Applications

## a) Application Availability

- 1) Applications for financial assistance will be made available on an ongoing basis provided sufficient monies are available for the program. Upon request, the Department will supply potential applicants with an application package.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 2) Any Development Corporation as defined in Section 545.420 is eligible to apply for financial assistance to set up (e.g., organize, incorporate, establish by-laws, policies, procedures, start-up, etc.) and/or capitalize a Development Corporation or fund a business project under this program. Such applicants must submit applications on forms provided by the Department. Standard application forms will be used statewide.

## b) Program Application -- Applications for financial assistance from the Department must address the following items:

- 1) History of Applicant -- Provide a brief history of the Development Corporation, legal status (i.e., stock corporation, not-for-profit, general unit of government, etc.), board structure, office location, etc. Provide proof of authority to operate including, as appropriate, articles of incorporation, bylaws, and a resolution of the Board to participate.
- 2) Mission and Goals -- Fully describe the public purpose being served by the Development Corporation which must include financing and promoting the adoption of advanced technologies, the major objectives of the proposed Development Corporation and how it will meet these objectives.
- 3) Local Market Needs -- Identify the geographic area to be served by the Development Corporation and the typical borrowers to be served (e.g., beneficiaries of the Development Corporation's lending). Identify problems or weaknesses in the ability of conventional lenders to serve the Development Corporation's typical borrower and the primary business financing needs that will be addressed. Include a profile of the Development Corporation's target area, for example county, multi-county area, statewide, etc.
- 4) Financial Products and Services -- Describe the specific financial products and financial services to be offered. This should include the type of lending and equity to be offered, term of lending to be provided, minimum and maximum amounts, if any, on loans outstanding to individual firms, etc. If the Development Corporation is recently formed, include the timetable for implementation.
- 5) Results Expected -- Describe anticipated public benefits resulting from the Department's financial assistance in terms of retooling or modernization, jobs created or retained, etc.
- 6) Staffing and Management -- Provide a description of how and by whom the Development Corporation will be managed and staffed including specific information on board membership. Describe anticipated federal or state agency regulatory oversight activities of the Development Corporation's activities.
- 7) Operating Procedures and Strategies -- Describe how the Development Corporation will be operated, proposed location of offices and/or facilities, marketing of corporate services, etc. Describe the corporate decision making process for making



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

business loans and other types of investments, due diligence process and credit analysis procedures to be used, and application procedures to assure prudent operation of the lending and investment activity. Minimally, these service delivery strategies must be adequate to address relending requirements outlined in Section 545.495.

- 8) Coordination and Community Involvement -- Provide a description of the primary working relationships with public and private entities, such as local state and federal financial institutions, venture capital partnerships, public or non-profit development agencies, etc. Describe community involvement in the Development Corporation referral process (if any).

- 9) Capitalization -- Provide a summary of financial projections, anticipated sources of operating income, the amount of Development Corporation capitalization and the expected funding needs of the Development Corporation. Specifically, include the nature and amount of bank and other corporate investment, and major stockholders or shareholders and percent of ownership. For a new Development Corporation, include a detailed timetable for securing all initial corporate financing.

- 10) Budget Request -- Identify the amount of funds being sought from the Department. The request should also detail the type of funding requested (loan, grant or security investment), how it will be secured and repaid, and how it will be used (direct lending, etc.) and the anticipated schedule (timing) for using Department funds. If Departmental monies are to be used for organizational costs, the amount should be noted, and justification should be provided.

- c) Subsequent Applications -- Applications for capitalization by Development Corporations that have received set up or capitalization financial assistance under this program may incorporate by reference and update the previously submitted information to meet the requirements of subsection (b) of this Section.

- d) Business Project Applications -- Applications for financial assistance to fund specific business projects must include the applicable project information required in Section 545.495. Development Corporations that have not previously received financial assistance under this program may also be required to provide applicable information from subsections (b)(1), (7) and (9) of this Section.

**Section 545.440 Application Review Process**

- a) Department staff will screen all applications to determine that all minimum requirements of the application package have been addressed. Applications will be reviewed in accordance with Department review criteria listed in subsection (b), (c) or (d) of this Section.

- b) A request for financial assistance to set up and/or capitalize a Development Corporation will be evaluated in accordance with the

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

requirements of this Part. The review will begin upon receipt of the application. Applicants will be advised of the Department's decision in writing. Applications will be evaluated on the basis of:

- 1) The nature of financial needs of the area and the geographic diversity of the applicants;
  - 2) The capability of the applicant and its staff as demonstrated by existing or past experience in managing similar work activities to those proposed to be undertaken;
  - 3) Time schedule for project initiation, etc. indicating the level of project readiness;
  - 4) Actual or anticipated amount of capitalization, extent of leveraging of other financial resources and consistency of proposed items of expenditure with the requirements of the Act;
  - 5) The merits of the proposed work plan and consistency of proposed activities with requirements of Section 545.495;
  - 6) The level of economic development results expected in terms of development financing, retooling or modernization, jobs created or retained, private funds leveraged, etc. and level of other significant benefits or impacts;
  - 7) Evidence of direct linkages or coordination between the proposed program and private financial institutions and public investment/loan/guarantee programs;
  - 8) The anticipated financial feasibility of the project and its ability to maintain continuous operation beneficial to the public; and
  - 9) Level of performance by applicant under previous Departmental programs, if applicable.
- c) Subsequent Applications -- Review of subsequent application(s) for capitalization may utilize and appropriately update the previous review(s) made of the information submitted by a Development Corporation to meet the requirements of subsection (b) of this Section.
  - d) Business Project Applications -- Applications for financial assistance to fund specific business projects will be reviewed to determine that all minimum requirements of the application package have been addressed and that funding the projects will meet the purposes of the Act.
  - e) The Department will notify successful applicants of the amount of financial assistance approved. During formal negotiation discussions held with the Department, the Department and the applicant will agree to the terms of the agreement. The Department will issue an agreement, for signature by the applicant. Subject to negotiation, the Department may limit the amount of time such funds will be available for the use by the Applicant.

**Section 545.450 Financial Assistance**

- a) Financial Assistance Limits --

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

- 1) Department Financial Assistance to a Development Corporation in the form of loan(s) and/or qualified security investment(s) shall not be made for more than 25 percent of the amount of actual or anticipated capitalization, not including any funds originating from state or federal sources through the Department, unless the Director of the Department determines that a waiver of this limit in accordance with subsection (b) of this Section is required to meet the purposes of the Act.
- 2) Department Financial Assistance to a Development Corporation in the form of a loan or qualified security investment for lending or investing in a particular qualified business project shall not be made for more than 25 percent of the amount of the total business project expense and must be matched at least 1:1 by the Development Corporation's capitalization (equity or debt), not including any funds originating from state or federal sources through the Department, unless the Director of the Department determines that a waiver of these limits in accordance with subsection (b) of this Section is required to meet the purpose of the Act.
- 3) Department Financial Assistance to a Development Corporation in the form of a grant shall not be made for more than \$50,000 or more than 25 percent of the amount of actual or anticipated fixed (i.e., permanent) capitalization, not including any funds originating from state or federal sources through the Department, unless the Director of the Department determines a waiver is required to meet the purposes of the Act.
- 4) Development Corporations that have received capitalization grants shall subsequently be limited to financial assistance in the form of loans and/or qualified security investments unless the Director of the Department waives this limitation.
- 5) The Department may limit the amount of financial assistance available to any Development Corporation.
  - b) Funding Waivers -- The Director shall waive limitations governing the amount of the financial assistance and percentage of leverage when it is determined that these funding limitations would prohibit an otherwise approved project, and subsequent job creation/retention, from occurring. A waiver may be granted if the application demonstrates severe need, including, but not limited to a demonstration that:
    - 1) The Development Corporation or business project serves a distressed community, county, or multi-county area with an unemployment rate which is 25 percent higher than the state's average;
    - 2) The area to be served has limited economic development potential without support as evidenced by new job growth rate less than the state or national average;
    - 3) Funding would support a Development Corporation which has provided assurance the project will generate business growth and

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

job creation in the community as a result of spinoff businesses and thus evidence that additional jobs will be created or retained.

**Section 545.460 Administrative Standards****a) Grants**

- 1) Financial Assistance Agreement -- During formal negotiations and discussions held with the Department, the Department and the applicant will agree to the scope of work of the agreement and the period of the agreement. The period of funding for grant agreements shall be no longer than two years.
- 2) Nondiscrimination -- The Development Corporation shall refrain from unlawful discrimination in employment and undertake affirmative action to assure equality of employment opportunity and eliminate the effects of past discrimination in accordance with the Illinois Human Rights Act [775 ILCS 5].
- 3) Complaint Process -- In the event of a Development Corporation complaint, the Department will follow the procedures outlined in 47 Ill. Adm. Code 10 (Review and Appeal Procedures).
- 4) Financial Statements -- The Development Corporation will provide, at least annually, information and reports required by the Department, including the Corporation's balance sheet, profit and loss statement, and other financial reports due within 45 calendar days of the end of the state fiscal year.
- 5) Progress Reports -- An annual progress report shall be prepared by the Development Corporation pertaining to and describing the progress in lending funds, specific business assisted, the amount of funds loaned and invested, the number of jobs created or retained, etc. A copy shall be delivered to the Department within 45 calendar days after the end of the state fiscal year.
- 6) Department Monitoring and Evaluation -- A Development Corporation must permit any agent authorized by the Department, upon presentation of credentials, to have full access to and the right to examine any documents, papers, and records of the Development Corporation involving transactions related to financial assistance from the Department.
- 7) Conflict of Interest -- Each Development Corporation shall assure there is no conflict between borrowers and members of the Development Corporation's staff or board to the extent that no staff or board member shall have any financial interest in, or shall the member profit from, any loan to a borrower.
  - b) Loans and Investments
    - 1) Financial Assistance Agreement -- During formal negotiations and discussions held with the Department, the Department and the applicant will agree to the terms of the loan or investment agreement.
    - 2) Financial Statements -- The Development Corporation will provide,



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

at least annually, information and reports required by the Department, including the Corporation's balance sheet, profit and loss statement, and other financial reports due within 45 calendar days after the end of the state fiscal year.

3) Progress Reports -- An annual progress report shall be prepared by the Development Corporation pertaining to and describing the progress in lending funds, specific businesses assisted, the amount of funds loaned and invested, the number of jobs created or retained, etc. A copy shall be submitted to the Department within 45 calendar days after the end of the state fiscal year.

4) Department Monitoring and Evaluation -- A Development Corporation must permit any agent authorized by the Department, upon presentation of credentials, to have full access to and the right to examine any documents, papers, and records of the Development Corporation involving transactions related to financial assistance from the Department.

**Section 545.470 Financial Assistance Standards**

The Department and Development Corporation shall negotiate and execute a grant, loan or investment agreement including appropriate financial assistance standards consistent with all applicable laws and regulations and the type of financial assistance provided. The agreement, as appropriate, may include, but not be limited to, standards for record retention, cash management, financial management, record review and monitoring, audits, reporting and/or modification of the agreement.

**Section 545.480 Audits (Repealed)****Section 545.490 Modification, Suspension and Termination of Financial Assistance (Repealed)****Section 545.495 General Terms Governing Relending**

When Financial Assistance provided by the Department is used by the Development Corporation for relending to or direct investments in Illinois based firms, the Corporation shall meet the following standards:

a) Applications -- An application for a loan or a security investment submitted to the Development Corporation may require facts about the company's history, job opportunities, stability of employment, past and present condition and structure, actual and pro-forma income statements, present and future market prospects and management qualification, and any other facts deemed material to the financing request. The Development Corporation shall obtain such additional information concerning the application as it deems necessary and diligent (Section 3003 of the Act).

b) Financial Analysis -- The Development Corporation shall, on the basis of the application, and any other information, prepare a report

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED REPEALER

concerning the credit-worthiness of the proposed borrower, the financial commitment of other investors, the manner in which the proposed business project will advance the economy of the state, and the soundness of the proposed financial assistance agreement (Section 3003 of the Act).

c) Other Financing -- Assistance shall be awarded only if other financing with respect to the business project is provided. Other financing may include, but shall not be limited to any loan, equity position, convertible preferred stock, letter of credit, guarantee, or bond purchase (Section 3002(a) of the Act).

d) Adequate Security -- Loans or security investment may be secured by first or second positions on real or personal property, by royalty payments, by personal notes or guarantees, or by any other security satisfactory to the (Section 3002(b) of the Act) Development Corporation.

e) Terms and Provisions -- Loans or security investments shall be in such principal amount and form, and contain such terms and provisions with respect to the property, insurance, repairs, alteration, payment of taxes and assessments, delinquency charges, default remedies, additional security as shall be determined adequate (Section 3002(c) of the Act).

f) Loans -- In determining if a loan is to be provided, the Development Corporation shall determine whether there will be an expected improvement in production levels, quality of output or timeliness of delivery and that the number of jobs to be created or retained is reasonable in relation to the loan funds requested (Section 3004(b) of the Act).

g) Qualified Security Investments -- In determining if a qualified security investment is to be made, the Development Corporation shall find that there is a likelihood of commercial feasibility given the state of development of the proposed product, process, or technical device, and that there is likelihood of increased job opportunities in the near term as a result of the security investment (Section 3004(a) of the Act).

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Technology Advancement and Development Act Programs

- 2) Code Citation: 14 Ill. Adm. Code 545

<u>Section Numbers:</u>	<u>Proposed Action:</u>
545.10	New Section
545.20	New Section
545.30	New Section
545.110	New Section
545.120	New Section
545.130	New Section
545.210	New Section
545.220	New Section
545.230	New Section
545.240	New Section
545.310	New Section
545.320	New Section
545.330	New Section
545.340	New Section
545.350	New Section
545.360	New Section
545.410	New Section
545.420	New Section
545.430	New Section
545.440	New Section
545.450	New Section

- 4) Statutory Authority: Implementing and authorized by the Technology Advancement and Development Act [20 ILCS 700].

- 5) A complete description of the Subjects and Issues Involved: The Technology Advancement and Development Act provides for the creation of four types of entities: Illinois Technology Enterprise Development Centers; Technology Commercialization Centers; Manufacturing Extension Centers; and, Development Corporations. The Act further authorizes the Department to implement five programs: the Technology Challenge Grant Program; the Enterprise Development and Investment Program; the Modernization Retooling Loan Program; the Modernization Grants Program; and the Manufacturing and Export Base Services Program. The proposed rule provides policies and procedural guidance for the creation of these entities and implementation of these programs. Specifically, the proposed rule describes the purposes, allowable activities, definitions, limitations and application procedures.

- 6) Will these proposed rules replace an emergency rule in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 8) Does this rule contain incorporation by reference? No

- 9) Are there any other proposed rules pending on this Part? The Department is repealing the existing rule in its entirety and is simultaneously replacing the existing rule with this proposed rulemaking.

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create or expand a State mandate as defined in Section 3(b) of the State Mandates Act.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking:

Ms. Rava Bogard  
Illinois Administrative Code Rules Manager  
Department of Commerce and Community Affairs  
100 West Randolph St., Suite 3-400  
Chicago, Illinois 60601  
(312) 814-9593

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities, and not-for-profit corporations affected: Programs and activities authorized under the Act and this proposed rule primarily target small and medium sized businesses with 1,000 or fewer employees. Targeted firms are those involved in advanced technology projects including, but not limited to, projects designed to foster greater knowledge or understanding, or which are designed for the purposes of improving, designing, developing, prototyping, producing or commercializing new products, techniques, processes or technical devices in present or emerging fields of health care and biomedical research, information and communication systems, computing and computer services, electronics, manufacturing, robotics and materials research, transportation and aerospace, agriculture and biotechnology, and finance and services. Not-for-profit and for-profit corporations may serve as an "intermediary organization" under grant or contract with the Department to operate one or more programs. Such firms and not-for-profit organizations may benefit from the receipt of financial and/or non-financial (e.g., technical assistance) services authorized under the Act.

- B) Reporting, bookkeeping or other procedures required for compliance: The rule specifies administrative procedures for the various programs funded under the Technology Advancement and Development Act. The rule includes application procedures and subsequent programmatic and fiscal reporting requirements. The rule also specifies audit, record keeping, and related procedures necessary to safeguard State funds and



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

for prudent administration of authorized programs.

- C) Types of professional skills necessary for compliance: Professional skills required of grantees will vary depending on the specific area of technology being targeted for development. In addition to skills related to the targeted technology, grantees must have skills associated with the administration of public programs including, program and financial management skills.

13) Regulatory agenda on which this rulemaking was summarized: July 2001

The full text of the Proposed Rules begins on the next page:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

## TITLE 14: COMMERCE

## CHAPTER I: DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## PART 545

## TECHNOLOGY ADVANCEMENT AND DEVELOPMENT ACT PROGRAMS

## SUBPART A: ADMINISTRATIVE REQUIREMENTS

## Section

545.10 General Purpose

545.20 Definitions

545.30 Administrative Requirements

## SUBPART B: TECHNOLOGY CHALLENGE GRANT PROGRAM

545.110 Purpose

545.120 Authorized Programs and Activities

545.130 Eligible Applicants

## SUBPART C: ENTERPRISE DEVELOPMENT AND INVESTMENT PROGRAM

545.210 Purpose

545.220 Direct Investment Strategy

545.230 Portfolio Investment Strategy

545.240 Illinois Technology Enterprise Development Centers

## SUBPART D: BUSINESS MODERNIZATION PROGRAM

545.310 Purpose

545.320 Modernization Retooling Loan Program

545.330 Modernization Grants Program

545.340 Development Corporations

545.350 Manufacturing Extension Program

545.360 Manufacturing and Export Base Services Program

## SUBPART E: DIRECT GRANT, INVESTMENT, AND LOAN APPLICATION PROCEDURES

545.410

Methods of Direct Grant, Investment, and Loan Application Submittal

545.420 Application Content

545.430 Screening of Applications

545.440 General Review Criteria

545.450 Program Specific Criteria

**AUTHORITY:** Implementing and authorized by the Technology Advancement and Development Act [20 ILCS 700].

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

**SOURCE:** Emergency rules adopted at 13 Ill. Reg. 19753, effective December 1, 1989, for a maximum of 150 days; emergency expired April 30, 1990; adopted at 14 Ill. Reg. 9016, effective, May 29, 1990; amended at 15 Ill. Reg. 15040, effective October 4, 1991; amended at 18 Ill. Reg. 8415, effective May 23, 1994; amended at 18 Ill. Reg. 17213, effective, November 17, 1994; old Part repealed at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_; new Part adopted at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: ADMINISTRATIVE REQUIREMENTS

**Section 545.10 General Purpose**

The purpose of the Technology Advancement and Development Act is described in Section 1002 of the Act [20 ILCS 700/1002]. The purpose is to assist Illinois firms, in an increasingly global marketplace, to remain competitive by promoting the development and commercialization of new and advanced technologies. This is to be achieved through several strategies including:

- a) promoting private sector and nonprofit research institutions that serve as intermediaries operating programs and undertaking activities authorized by the Act;
- b) commercializing new technology products, services, and processes; and
- c) modernizing the industrial base of small and medium-sized firms.

**Section 545.20 Definitions**

- a) Definitions in the Act: The following words and phrases, for the purpose of this rule, have the same meaning respectively ascribed to them in Section 1003 of the Act [20 ILCS 700/1003].

**"Act" means the Technology Advancement and Development Act (20-ILCS 700):**

**"Advanced technology project" means any area of basic or applied research or development which is designed to foster greater knowledge or understanding, or which is designed for the purposes of improving, designing, developing, prototyping, producing or commercializing new products, techniques, processes or technical devices in present or emerging fields of health care and biomedical research, information and communication systems, computing and computer services, electronics, manufacturing, robotics and materials research, transportation and aerospace, agriculture and biotechnology, and finance and services.**

**"Business expense" includes working capital financing, the purchase or lease of machinery and equipment, or the lease or purchase of real property, including construction, renovation, or leasehold improvements, but does not include refinancing current debt.**

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

**"Business project" means any specific economic development activity of a commercial, industrial, manufacturing, agricultural, scientific, financial, service or other not-for-profit nature, which is expected to yield an increase in jobs or to result in the retention of jobs or an improvement in production efficiency.**

**"Department" means the Illinois Department of Commerce and Community Affairs.**

**"Director" means the Director of the Illinois Department of Commerce and Community Affairs.**

**"Financial assistance" means a loan, investment, grant or the purchase of qualified securities or other means whereby financial aid is made available to or on behalf of a business project or advanced technology project.**

**"Intermediary organization" means any participating organization including not-for-profit entities, for-profit entities, State development authorities, institutions of higher education, other public or private corporations, which may include the Illinois Coalition, or other entities necessary or desirable to further the purpose of this Act engaged by the Department through any contract, agreement, memoranda of understanding, or other cooperative arrangement to deliver programs authorized under the Act.**

**"Investment loan" means any loan structured so that the applicant repays the principal and interest and provides a qualified security investment to serve both as additional loan security and as an additional source of repayment.**

**"Loan" means acceptance of any note, bond, debenture, or evidence of indebtedness, whether unsecured or secured by a mortgage, pledge, deed of trust, or other lien on any property, or any certificate of, receipt for, participation in, or an option to any of the foregoing. A loan shall bear such interest rate, with such terms of repayment, secured by such collateral, with other terms and conditions, as the Department shall deem necessary or appropriate.**

**"Participating lender or investor" means any trust company, bank, savings bank, credit union, merchant bank, investment bank, broker, investment trust, pension fund, building and loan association, savings and loan association, insurance company, venture capital company or other institution, community or State development corporation, development authority authorized to do business by an Act of this State, or other public or private financing intermediary approved by the Department whose purposes include financing, promoting, or encouraging economic development financing.**



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

"Qualified security investments" means any stock, convertible security, treasury stock, limited partnership interest, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, investment contract, certificate of interest or participation in a patent or application or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, guarantee of, or option, warrant or right to subscribe to or purchase any of the foregoing, but not including any instrument which contains voting rights or which can be converted to contain voting rights in the possession of the Department.

## b) Other Definitions:

"Act" means the Technology Advancement and Development Act [20 ILCS 700].

"Recipient" means any entity receiving financial assistance under the Act.

"Small and medium size business" means any for-profit business with 1,000 or fewer employees assigned to work locations within the State of Illinois.

**Section 545.30 Administrative Requirements**

- a) Record Retention and Review - An entity receiving financial assistance shall, as deemed necessary by the Department, permit the Department, its representatives, or its designee, to have full access to and the right to examine any pertinent documents, papers, and records of the recipient involving transactions related to financial assistance received under the Act for such a period of time as specified in the agreement between the Department and the recipient.
- b) Financial Management Standards - An entity receiving financial assistance shall maintain a financial management system structured to provide for accurate, current, and complete disclosure of the expenditures of such financial assistance. The entity is accountable for financial assistance received under the Act and shall maintain effective control and accountability over all funds, equipment, property, and other assets obtained through such financial assistance. Records shall be sufficient to permit the tracking of funds to a level of expenditure adequate to ensure that funds have not been spent unlawfully.
- c) Audits - Audit requirements shall be specified in the agreement (e.g., grant, investment, or loan agreement) between the entity receiving financial assistance and the Department or between the entity receiving financial assistance and an intermediary organization.
- d) Complaint Process - In the case of a complaint by an entity receiving

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- e) Patent and Technical Information - Copyright and patent policies of an entity receiving financial assistance must provide for protection of technical information, and identify ownership and control of patents. Except when specified to the contrary in the agreement between the Department and the recipient, the State of Illinois shall be granted a no charge license to use the technology or materials covered by any patent or copyright for which the technology or material was either conceived or reduced to practice with such financial assistance.
- f) Interest on Grant Funds - In accordance with Section 10 of the Illinois Grant Funds Recovery Act [30 ILCS 705/10], all interest earned on funds held by the recipient of a grant awarded pursuant to the requirements of the Act shall become part of the grant principal when earned unless the grant agreement provides otherwise. However, any interest earned on funds subject to a Department grant after the grant's expiration date shall become part of the grant principal and shall be so treated for all purposes.
- g) Reporting - Unless otherwise specified in the agreement between the Department and the recipient, an entity receiving financial assistance shall report financial and programmatic data to the Department on a regular basis using formats provided by the Department. Report formats and content shall be customized to the specific program and form of financial assistance. Generally, the Department requires quarterly reporting of expenditures and program achievements at a level of detail sufficient to provide for program accountability.

- 1) Expenditures - Unless otherwise specified in the agreement with the Department or an intermediary organization, an entity receiving financial assistance shall report actual expenditure of financial assistance using expenditure formats supplied by the Department. Expenditure summaries are to be submitted to the Department by the 15th day following the end of each fiscal quarter in which any expenditure of financial assistance is made.
- 2) Program Report - Unless otherwise specified in the agreement with the Department or an intermediary organization, an entity receiving financial assistance shall submit a program report in a format provided by the Department. Generally, the program report shall include a narrative describing the entity's progress towards achieving objectives and activities as specified in the agreement with the Department or an intermediary organization. Program reports shall be submitted to the Department by the 15th day following the end of each fiscal quarter.

- h) Confidentiality of Trade Secrets and Commercial or Financial Information - Protections relating to the confidentiality of trade secrets, commercial, or financial information regarding the operation of any enterprise are specified at Section 4002 of the Act. The protections apply to any information provided by an entity applying

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

for, or receiving, financial assistance under the Act. To the extent authorized by the Freedom of Information Act [5 ILCS 140], the Department shall not make public any information disclosing program supported technical information if such disclosure would affect the commercialization potential of the project, service, or process being promoted.

i) Suspension and Termination - The Department shall, after notice to the entity, suspend the financial assistance and withhold further payments or prohibit the entity from incurring additional obligations against such financial assistance:

- 1) if the General Assembly does not appropriate funding at a level sufficient to fund the program or activity;
- 2) if the Department determines that the entity has failed to comply with the terms and conditions of the agreement in whole or in part;
- 3) if an entity receiving financial assistance consistently fails to submit required reports, fails to maintain required records, fails to protect inventory, or misuses equipment;
- 4) if there are findings of fraud and abuse; or
- 5) if the Department and the entity receiving financial assistance agree that the continuation of the program objectives would not produce beneficial results commensurate with the future expenditures.

j) Right to Verify Information - At the sole discretion of the Department or an intermediary organization acting on behalf of the Department, staff of the Department and/or an intermediary organization may conduct phone interviews or field visitations to evaluate and verify information submitted as part of an application for financial assistance.

k) Access to Project Site - During the application process, or during the conduct of a technology or business project, the sponsoring organization and/or applicants shall provide the Department and/or an intermediary organization access to the place of business and site where the business project will be undertaken. The Department and/or the intermediary organization shall provide notice to the business prior to requesting such access and shall request access only during the business' normal working hours.

l) Director's Waiver of Limitations - The Director may waive the limitations cited at Sections 545.220(c)(2), 545.320(d), and 545.330(d). A waiver may be granted when the Director of the Department determines that a waiver of these limits is required to meet the purposes of the Act [20 ILCS 700/3004(a), 3004(b), 3004(c), and 3515(c)]. In determining whether to grant such a waiver, the Director may consider factors, if applicable, including, but not limited to:

- 1) the project would not go forward but for the State's participation;
- 2) the business is located in a distressed community;

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 3) there is a strong likelihood of generating significant new or increased business or investment within the State; and
- 4) there are sufficient program funds available, in view of competing requests.

## SUBPART B: TECHNOLOGY CHALLENGE GRANT PROGRAM

## Section 545.110 Purpose

The purposes of the Technology Challenge Grant Program are specified at Section 2001 of the Act [20 ILCS 700/2001]. First, the Department is authorized to make grants that provide initial funding for projects that, in turn, help secure federal research and development projects for the State. Second, the Department is authorized to provide initial grant funding for projects that identify and develop technologies capable of commercialization. Third, the Department is authorized to fund programs and activities that provide a catalyst for and strengthen the State's capacity to commercialize new technologies.

## Section 545.120 Authorized Programs and Activities

a) Grants may be awarded for the activities specified at Section 2002 of the Act, including:

- 1) Advanced Technology Projects - The Department may award initial grant funds for applied innovation research projects that respond to unique, advanced technology projects and which foster the development of Illinois' economy through the advancement of the State's economic, scientific, and technological assets.
- 2) Leveraged Technology Projects - The Department may award initial grant funds for applied innovation research projects to assist eligible applicants in the State to apply for, or qualify for and leverage, federal funds awarded for advanced technology projects concerning research and development, business innovation research or technical development, or transfer of useful technology to the private sector.
- 3) University - Industry Partnerships - The Department may grant funds for joint university and industry initiatives that create high-skill employment opportunities and internship activities that enable graduates and faculty to stay and work in Illinois. The Department may also grant funds for joint university and industry initiatives designed to strengthen the relationship between industry and academia, so that applied university research is responsive to the needs of Illinois' industries.
- 4) Technology Commercialization Centers - The Department may award grant funds to create and operate centers of excellence in technology commercialization, innovation evaluation, and intellectual property management that encourages the growth of new enterprises based on technologies developed at Illinois



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

research centers, including technology partnerships, technology consortiums or research centers, and industry technology associations that are, or will be, established to perform research and development in present and emerging technologies that can be developed for use by commerce and industry.

5) Technology Transfer Projects - The Department may award grant funds for technology transfer projects involving promotion of new or innovative technologies among small and medium-sized Illinois manufacturers where the technologies have immediate commercial application.

6) Continuous Improvement Projects - The Department may award grant funds to provide for planning and operational support for statewide support that improves practices in technology commercialization, including needs assessment and evaluation of the status of technology implementation throughout the State. [20 ILCS 700/2002]

b) Allowable Costs - Allowable costs are specified in Section 202(b) of the Act, including costs for capital improvements, equipment, contractual services, commodities, personnel, support costs, including telecommunications, electronic data and commodities, or other costs. All costs are subject to the approval of the Department. Indirect costs shall be limited to no more than 15% of direct grant costs. [20 ILCS 700/2002(b)]

c) Combination with Technology Enterprise Development Centers - As a means of increasing cost efficiency of program delivery, the Department may combine program responsibilities for activities authorized under subsection(a)(4), Technology Commercialization Centers, with activities authorized under Technology Enterprise Development Centers, as described in Section 545.240 of this Part. As authorized by the Department through an agreement, Technology Enterprise Development Centers may serve as Technology Commercialization Centers.

## Section 545.130 Eligible Applicants

Section 2001 of the Act specifies entities eligible to apply for funding under the Technology Challenge Grant Program. Eligible applicants include:

a) Institutions - Eligible institutions include universities, colleges, community colleges, nonprofit research foundations or laboratories, State research institutions, and industry technology associations.

b) Technology Partnerships - Technology Partnerships include any partnership or consortium established by a formal project agreement between:

- 1) two or more private industries, or
- 2) any combination of one or more private industries with one or more universities, colleges, community colleges, nonprofit research laboratories, nonprofit research foundations, or State research institutions.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

c) Private Enterprise - This category includes any private sector enterprise developing or commercializing technology or leveraging federal technology development financing, including but not limited to the small business innovation research program. [20 ILCS 700/2001]

## SUBPART C: ENTERPRISE DEVELOPMENT AND INVESTMENT PROGRAM

## Section 545.210 Purpose

The purposes of the Enterprise Development and Investment Program are defined at Section 3001 of the Act. The program primarily targets new and growing Illinois firms. The goals of the program are as follows:

- a) provide investments, loans, or qualified security investments to or on behalf of young or growing businesses or, on behalf of new or emerging business through financial intermediaries as they commercialize advanced technology projects; and
- b) fund regional technology enterprise development centers that make available resources and expertise in furthering the technical or managerial skills of owners; aid the ventures in locating financing; and help new companies with product development and marketing.

## Section 545.220 Direct Investment Strategy

As authorized by Section 3001 of the Act [20 ILCS 700/3001], the Department may directly provide investments, loans, or qualified security investments to promote the commercialization of advanced technology. Generally, investments may be made to finance any new process, technique, product, service, or device that is now, or that may become, commercially exploitable.

a) Eligible Applicants - Direct investments may be made in young, growing businesses, and businesses who have qualified for Federal Small Business Innovation Research funds. [20 ILCS 700/3004(a)]

b) Allowable Activities - Direct investments may be made for the purposes specified in Section 3004 of the Act. Financial assistance proceeds may be used for expenses that include, but are not limited to:

- 1) costs incurred for research and development;
- 2) amortizable organizational costs;
- 3) working capital financing;
- 4) the purchase or lease of machinery and equipment; and
- 5) acquisition, improvement, or rehabilitation of land and buildings. [20 ILCS 700/3004(a)]

c) Limitations - Investments are subject to the following limitations:

- 1) The Department may make direct investments and loans based on the Department's current investment strategy in cooperation with private sector investment companies, private investors, or conventional lending institutions which also assume a portion of the investment loan or financing for the business project [20 ILCS 700/3001]. The Department may decline to make any direct investment that does not meet the Department's current investment

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

strategy. The Department shall require applicants to show the source of new, unexpended, actual or anticipated matching funds covering a minimum of 50% of total advanced technology or business project costs. Matching funds covering a minimum of 25% of total advanced technology or business project costs shall be from sources independent of the applicants.

- 2) Direct qualified security investments or investment loans shall not be made for more than \$500,000 and shall not be made for more than 50% of the business project costs unless the Director determines that a waiver of these limits is required to meet the purpose of the Act [20 ILCS 700/3004(a)].

## Section 545.230 Portfolio Investment Strategy

As authorized by Section 3001 of the Act, the Department may indirectly provide investments, loans, or qualified security investments through financial intermediaries to young or growing businesses for a business project, or as they commercialize advanced technology projects.

- a) Eligible Applicants - The Department may provide investments in revolving fund portfolios with intermediary organizations or participating lenders or investors. The financial assistance may be made available to qualified intermediaries that assume a responsibility for the administration of the projects funded through the investment. Qualified intermediaries, at a minimum, shall:
  - 1) have a successful seed/early stage investment track record; and
  - 2) be capable of effectively evaluating the commercialization feasibility of advanced technology or business projects.
- b) Selection of Portfolio Funds - In making a determination to participate in an investment or loan portfolio, the Department shall find that the applicant will, at a minimum:
  - 1) commit to a three to one, private (or federal) dollar, leverage for each dollar invested in the portfolio by the Department;
  - 2) commit to making best efforts to invest the monies from the fund in Illinois companies, or companies willing to relocate to Illinois, at a disproportionate rate; and
  - 3) the business or industry sector targeted by the fund is likely to expand as a result of investment and increase job creation within Illinois.
- c) Allowable Activities - Intermediary organizations may use the Department's funds to provide investments, loans, or qualified security investments to young or growing businesses for business projects, or for commercialization of advanced technology.
- d) Limitations - The amount of money that shall be invested in an intermediary shall be determined, in part, based on the Department's current investment strategy. The Department may decline to invest in any intermediary or portfolio that does not meet the Department's current investment strategy. In determining the amount to invest, the Department may also consider the amount of private or federal funds

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

available to leverage the State's investment, the proposed types of investments, the geographic locations that will benefit from the proposed investments, and other factors relevant to the appropriateness of the proposed investment activities, as determined by the Department. The Department may invest up to, but shall not exceed, \$2,000,000 in an authorized intermediary's investment portfolio.

## Section 545.240 Illinois Technology Enterprise Development Centers

- a) Purpose - The purpose of Illinois Technology Enterprise Development Centers is provided in Section 3004.5 of the Act. The Department may, subject to available appropriated funds, working with the Illinois Coalition, establish one or more regional technology enterprise development centers whose mission is to assist entrepreneurs, innovators, and start-up firms in high-growth, high technology sectors in furthering the technical or managerial skills of owners; aid the ventures in locating financing; and help new companies with product development and marketing in support of new venture formation within the State [20 ILCS 3004.5(a)].
- b) Allowable Costs - Allowable costs are defined at Section 3004.5(b) of the Act. Grant funds may be used to support the operation of technology enterprise development centers. Grant funds may be used to help subsidize expenses, as approved by the Department, for:
  - 1) personnel;
  - 2) fringe benefits;
  - 3) travel;
  - 4) equipment;
  - 5) supplies;
  - 6) commodities, including telecommunication or other costs;
  - 7) contractual services;
  - 8) other support costs;
  - 9) capital improvements; and
  - 10) revolving funds.

- c) Technical Assistance and Support Services - Per Section 3004.5(c) of the Act, technology enterprise development centers may provide crucial business information at affordable prices for firms that are developing early-stage, technology-oriented manufacturing projects including:
  - 1) general or short-term assistance, general outreach, feasibility studies for new venture formation, and research assistance for new venture creation;
  - 2) innovation evaluation and market research to evaluate the viability of technology, product, or service or the market potential of technology, product, or service;
  - 3) technical assistance related to management and operations and strategic partnering and assistance in the implementation of strategic manufacturing and marketing alliances; and



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 4) service in locating new technologies or technological solutions.  
 d) Financial Services - Per Section 3004.5(d) and (e) of the Act, technology enterprise development centers may provide financial services that include:

- 1) financial packaging to enhance proposals and make companies more competitive for federal or private funding;
- 2) access to private investor capital through venture capital events and regional venture capital networking programs;
- 3) management of local for-profit or limited profit seed capital funds; and
- 4) pre-seed financing to start-up technology-based businesses to commercialize new technology. Financing options may include:

- A) micro-loans;
- B) small grants; and
- C) equity investment capital for seed funding, product commercialization and prototype development, and commercial introduction and marketing.

- e) Professional Development of ITECs - As provided in Section 3004.5(f) of the Act, the Department may provide grant funds to support professional development and capacity building of the technology enterprise development centers within the State, as may be required for the administration, operations, research, analysis, or training of the centers.

- f) Procedures for Establishment of Centers

- 1) Identification of Service Regions - The Department shall designate locations in the State to be targeted for the creation of technology enterprise development centers. When making regional designations, the Department shall solicit recommendations from stakeholder groups, including the Illinois Coalition and the Illinois Technology Office, and shall consider factors, including but not limited to:

- A) concentrations of high technology business establishments;
- B) concentrations of entrepreneurs and innovators;
- C) access to capital markets;
- D) access to technical support and related service providers; and
- E) proximity to universities, research facilities, and laboratories.

- 2) Identification of Recipients of Financial Assistance - The Department, in selecting an intermediary organization to operate a center, shall first solicit the advice of stakeholders, including the Illinois Coalition and the Illinois Technology Office. Subsequently, the Department may negotiate with an intermediary organization to receive financial assistance for the purpose of operating a technology enterprise development center. In addition to the advice of stakeholders, in determining which applicants shall be awarded a grant, the Department shall examine:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- A) prior compliance with loan or grant awards;
- B) the relationship of a proposed project to the State's future economic growth;
- C) the qualifications and expertise of organizations undertaking the effort;
- D) the applicant's understanding of the requirements and needs of entrepreneurs, innovators, and start-up firms in high-growth, high technology sectors;
- E) the potential of the applicant's project to provide an economic benefit of the State;
- F) the likelihood that the project has a potential for creating new ventures in the State; and
- G) the potential of the applicant and/or its consortium to finance the regional center. [20 ILCS 700/3004.5(g)]

- 3) Application for Financial Assistance - The Department shall issue instructions and formats to selected applicants for the submittal of applications for financial assistance to support technology enterprise development centers. Applications shall include information such as:

- A) a description of the related experience of the applicant agency;
- B) a discussion of market niches served;
- C) measurable objectives;
- D) a description of the available services, including:
  - i) marketing plan to attract entrepreneurs;
  - ii) networking with and access to related services and providers;
  - iii) management consulting assistance and coaching;
  - iv) technology transfer services; and
  - v) access to venture capital;
- E) an implementation schedule;
- F) a description of center staffing and expertise;
- G) a line item budget proposal;
- H) a description of matching funds by source and amount; and
- I) a description of service fee and investment policies.

- 4) Renewal of Awards - The Department may renew a grant award for a subsequent year for any technology enterprise development center judged to be meeting performance objectives, as negotiated with the Department, during the current grant period. In making determinations regarding the renewal of grant awards, the Department shall consider evaluative criteria, including but not limited to:

- A) success of public relations events;
- B) success in providing technical information;
- C) the number of prototype project evaluations completed;
- D) the number of market research assessments completed;
- E) the success of management consulting assistance provided;
- F) the number of projects enrolled for ongoing services;

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- G) the total amount of venture capital accessed for projects; and  
 H) the number of new ventures established and jobs created.

## SUBPART D: BUSINESS MODERNIZATION PROGRAM

**Section 545.310 Purpose**

Per Section 3501 of the Act, the Department may create one or more programs to assist the State's existing mature business and industry base to adopt and use appropriate technologies. The programs may vary in breadth of activities, services, and projects in accordance with the level or complexity of the manufacturers' needs or problems.

**Section 545.320 Modernization Retooling Loan Program**

- a) Purpose - The purpose of the Modernization Retooling Loan Program is defined in Section 3505 of the Act. The Department may, subject to appropriated funds, establish a loan program to improve business production systems and work processes. Such improvements shall result in the preservation and/or creation of private sector jobs by increasing the firms' long-term competitive viability.
- b) Eligible Applicants - Any small, medium-sized or mature Illinois business may make an application for financial assistance under this program. An eligible business includes any for-profit business located in Illinois organized as a sole proprietorship, corporation, joint venture, partnership, association, or cooperative. For the purpose of this program, a mature business is one (including predecessor companies) that has been in continuous profitable operation for at least two years or has a meaningful operating history.
- c) Allowable Activities - Per Section 3505(a) and (b) of the Act, loans may be provided to, or on behalf of, the State's mature, small, or medium-sized businesses for the modernization and installation of advanced technologies or processes. A loan made for company modernization or retooling may be for any purpose consistent with the objectives of the Act, including but not limited to:
- 1) purchases of advanced machinery;
  - 2) equipment and tooling;
  - 3) organizational expenses for services;
  - 4) personnel training;
  - 5) corporate restructuring;
  - 6) working capital;
  - 7) acquisition, improvement, or rehabilitation of land and buildings; or
  - 8) any other business expense reasonably related to the project.
- d) Limitations - Per Section 3505(b) and (c) of the Act, the following limitations apply to this program:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 1) No loan made by the Department, or by an intermediary organization making a loan on behalf of the Department, shall be used to pay for the retirement of previous debt unless the debt is a part of the purchase or lease of machinery or equipment that is being upgraded.
- 2) A loan under this program shall not be made for more than \$500,000 or for more than 25% of the business project costs unless the Director determines that a waiver of these limits is required to meet the purposes of the Act.

**Section 545.330 Modernization Grants Program**

- a) Purpose - The purpose of the Modernization Grants Program is defined at Section 3515 of the Act. Subject to appropriated funds, modernization grants may be made for the purpose of financing, competitive assessments, or productivity improvement services that the Department determines may result in technology enhancement, retooling, restructuring, or other competitiveness improvements.
- b) Eligible Applicants - Grants may be made to, or on behalf of, Illinois' mature, small, or medium-sized businesses.
- c) Authorized Activities - Per Section 3515(a) of the Act, grants may be awarded for:
- 1) undertaking feasibility studies, competitiveness assessments, and productivity audits to restore their businesses' competitiveness; or
  - 2) the modernization and installation of advanced manufacturing systems or processes that will improve the businesses' production systems and work organization, or will preserve and create private sector jobs by increasing the firms' long-term competitive viability.
- d) Limitations - Per Section 3515(c) of the Act, modernization grants to eligible applicants shall not exceed \$100,000 or 50% of the project costs, unless the Director determines that a waiver of these limits is required to meet the purposes of the Act.
- e) Role of Intermediary Organizations - Per Section 3515(b), assistance authorized under this Section may be in the form of direct grant agreements, agreements with private sector consultants on behalf of a firm, or agreements with participating intermediary organizations.

**Section 545.340 Development Corporations**

- a) Purpose - Per Section 3510(a) of the Act, the Department may provide, subject to available appropriated funds, financial assistance to the State's mature, small, or medium-sized businesses through development corporations that assume a responsibility for the administration of the loan projects for the modernization and installation of advanced technologies.
- b) Eligible Applicants - As specified in Section 3510(b) of the Act,



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

development credit corporations, financial intermediaries, or other entities whose purpose includes financing, promoting, or encouraging commercialization, adoption, or implementation of advanced technologies, processes, or products, as determined by the Department, may participate in this program.

- c) Responsibilities of Development Corporations - Per Section 3510(d) of the Act, the Department is authorized to rely upon, and may provide for in the execution of an agreement, the participating lender's or investor's review on behalf of the State and approval of the credit, collateral security, and documentation; determination of eligibility, economic results expected, and the prospects for viability and repayment; the collection and use of fees, premiums, or charges; the organization, servicing, and disbursement of financial assistance; and such other purposes and activities as the Department, in its sole discretion, shall determine to be reasonable, appropriate, and consistent with the purposes of the Act.

- d) Forms of Financial Assistance - Development corporation financial assistance may be in the form of direct loans, grants, or purchases of qualified security investments or financial assistance [20 ILCS 700/3510(b)].

- e) Limitations - Financial assistance authorized under this Section shall not exceed 25% of the amount of new, "unexpended", actual or anticipated capitalization (i.e., grants or investments, not loans) to be used by the development corporation for:

- 1) loans or investments to firms to improve the businesses' production systems and work organization that will preserve and create private sector jobs by increasing the firms' long-term competitive viability; and
- 2) the planning and operation of the development corporation as approved by the Department through its agreement with the development corporation. Funds for planning and operation shall not exceed 10% of the financial assistance provided by the Department or the amount of new, actual, or anticipated capitalization. [20 ILCS 700/3510(c)]

## Section 545.350 Manufacturing Extension Program

- a) Purpose - The Purpose of the Manufacturing Extension Program is defined at Section 3520(a) of the Act. The Department may establish, subject to available appropriated funds, a program of statewide manufacturing extension centers serving the geographic needs of the State's manufacturers, whose mission is to assist small or medium-sized manufacturers with technological advancement, for continuous improvement of business practices for these firms to be better positioned to succeed against global competition.

- b) Allowable Costs - Per Section 3520(b) of the Act, the Department may provide grants or may provide cost share or reimbursements under this Section to support the operation of manufacturing extension

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

deliverers.

- c) Eligible Applicants - Per Section 3520(b), manufacturing extension deliverers can include universities and colleges, regional or sectorial based organizations, technical societies, or other similar groups, including organizations financed through a federal manufacturing extension partnership program.

- d) Procedures for establishment of regionally based or functionally based Manufacturing Extension Centers

- 1) Service Regions: Regionally based Manufacturing Extension Centers (MECs) must serve a specific geographic region of the State. Two regions are defined as follows:

A) Chicago Metropolitan Area:

- i) Cook County;
- ii) DuPage and Kane Counties;
- iii) Kendall and Will Counties; and
- iv) Lake and McHenry Counties.

B) Remainder of Illinois.

- 2) Service Specialties - Functionally based Manufacturing Extension Centers must serve a single industry, a limited number of related industries, or a specific manufacturing function.

- 3) Application for Financial Assistance - The Department shall issue instructions and formats for the submittal of applications for financial assistance to support MECs. Such applications shall be solicited on a competitive basis within each service specialty or specific region of the State targeted for the creation of a center. Applications shall include information such as:

- A) a description of the related experience of the applicant agency, including a discussion of performance against goals for projects funded by the Department in the past;
- B) a description of the qualifications of MEC staff, consultants, firms, and other organizations delivering MEC services;
- C) a discussion of the market niches and customers to be targeted, including technological opportunities and the specific needs of the region's industries;
- D) a description of MEC services to be provided, including:
  - i) marketing activities;
  - ii) educational events;
  - iii) enrollment of firms for modernization services;
  - iv) informal and structured assessments;
  - v) technical services to improve productivity; and
  - vi) specialized services (e.g., ISO/OS certification);
- E) a listing of performance objectives, including the number or amount of:
  - i) companies served;
  - ii) companies served for the first time;
  - iii) events;
  - iv) event attendees;

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- v) informal assistance;
  - vi) formal assistance;
  - vii) categories of formal and informal assistance;
  - viii) group projects; and
  - ix) evaluations;
- F) an implementation schedule;
- G) a proposed line item budget, including a description of matching funds by source and amount; and
- H) for federally designated MECs, a copy of the federal operating plan.
- 3) Application Review Criteria - As required by Section 3520(d) of the Act, in determining which applicants shall be awarded a grant, the Department shall examine:
- A) prior compliance with awards programs;
  - B) the relationship of a proposed project to the State's future economic growth;
  - C) the qualifications and expertise of organizations undertaking the effort;
  - D) the applicant's understanding of the requirements and needs of the target groups served;
  - E) the potential of the applicant's project to provide an economic benefit to the State;
  - F) the methods engaged to measure and track performance; and
  - G) the likelihood that the project has a potential for improving the competitiveness of small and mid-sized manufacturers.
- 4) Renewal of Awards - The Department may renew a grant award for a subsequent year for any MEC judged to be meeting performance objectives, as negotiated with the Department, during the current grant performance period. In making determinations regarding the renewal of grant awards, the Department shall consider evaluative criteria, including but not limited to the number or amount of:
- A) companies served;
  - B) companies served for the first time;
  - C) events;
  - D) event attendees;
  - E) informal assistance;
  - F) formal assistance;
  - G) categories of formal and informal assistance;
  - H) group projects; and
  - I) evaluations.
- e) Professional Development - Per Section 3520(c) of the Act, the Department may provide grant funds made available under the Act to support professional development and capacity building of the manufacturing extension system within the State as may be required for the administration, operations, research, analysis, promotion, or training of geographic based manufacturing extension centers.

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

## Section 545.360 Manufacturing and Export Base Services Program

- a) Purpose - Per Section 3525(a) of the Act, the Department may, subject to available appropriated funds, establish a program of statewide assistance to the manufacturing and services export base of the State serving the sector-wide needs of small and medium-sized companies.
- b) Allowable Activities - Per Section 3525(b) of the Act, the Department may provide grants, cost share funds, or reimbursements:
- 1) to State or substate programs providing better access to information;
  - 2) to reduce the impediments to the flow of technical information; and
  - 3) to provide Illinois manufacturers, producer firms, and export services firms with better or more timely access to the State's and the nation's technology base, including industrial and engineering consulting practices, university and research laboratory based engineers, private commercial product vendors, and other sources of technology or non-technology services.
- c) Eligible Applicants - Per Section 3525(d) of the Act, the Department may seek out applicants that may be considered for a grant, and may provide an award based on the qualifications and expertise of organizations undertaking the effort, the applicants understanding of the requirements and needs of the target groups served, and the likelihood that the proposed project will improve the State's future economic potential.
- d) Role of Intermediaries - Per Section 3525(c), the Department may provide grants to those private, public, and non-profit research institutions and organizations that agree to serve as an intermediary to achieve the purpose set forth in this Section that continues to ensure Illinois' economic vitality and competitiveness.

## SUBPART E: DIRECT GRANT, INVESTMENT, AND LOAN APPLICATION PROCEDURES

## Section 545.410 Methods of Direct Grant, Investment, and Loan Application Submittal

This Subpart describes procedures used by the Department and/or by intermediary organizations making direct grants, loans, or investments in support of advanced technology or business projects. This Subpart does not pertain to portfolio investments. For a discussion of procedures relating to portfolio investments by the Department, see Section 545.230 of this Part. When making direct grants, loans, or investments in support of advanced technology or business projects, the Department and/or intermediary organizations shall supply potential applicants with applications upon request, provided that funds are available for the program. Representatives of the Department and/or intermediary organizations may provide assistance to businesses in completing applications when requested. The Department may solicit or accept



## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

applications for grants, investments, and/or loans authorized under this Part through one of the following means.

- a) Competitive Request for Applications - The Department may periodically issue competitive requests for applications from eligible applicants.
- b) Unsolicited Applications - The Department may accept applications for grants, investments, and/or loans from eligible applicants on an ongoing basis, provided that funds are available for the program.
- c) Applications Submitted by Intermediaries - The Department may accept an application, submitted on behalf of an eligible applicant, from an intermediary organization. At the same time such an application is submitted to the Department, the intermediary organization shall also submit its evaluation of the application, completed pursuant to the requirements of Sections 545.440 and 545.450 of this Part. The Department shall subsequently complete its review independently, taking into account the recommendations and findings of the intermediary organization. The final decision to award financial assistance in response to such applications shall be made by the Director.
- d) Delegation to Intermediaries - The Department may, pursuant to an agreement between the Department and the intermediary organization, delegate responsibility to the intermediary organization to accept and evaluate applications from Illinois companies for grants, investments, and/or loans authorized under this Part and make such grants, investments, and/or loans on behalf of the Department.
- e) Coordinated Economic Development Applications - The Department may solicit an application from an eligible applicant as part of a package of economic development services and/or incentives for the purpose of soliciting a business project to retain or expand employment within Illinois. Such solicitation may be made if the resultant project is consistent with the purpose of the Act and will have a significant positive effect on Illinois' competitive economic position.

## Section 545.420 Application Content

The Department shall issue instructions and formats for the submittal of applications for financial assistance, customized to the requirements of the various programs described in this Part. Applications shall include the following information.

- a) Applicant Information - The application shall include sufficient information to demonstrate that the applicant is eligible to apply for financial assistance pursuant to the requirements of the Act and this Part.
- b) Project Information - The application shall contain sufficient information to clearly explain the nature and potential benefits of the proposed project. The application will generally follow a business plan format and, as applicable to the type of program, include sections such as:
  - 1) executive summary;

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- 2) description of the applicant (e.g., company or sponsoring organization);
- 3) description of the technologies, innovations, products, processes, systems, or devices to be developed or improved;
- 4) marketing information relevant to the proposed project;
- 5) description of the expected benefits to the company;
- 6) description of the expected public benefits to Illinois;
- 7) line item budget for use of the requested financial assistance;
- 8) description of the operating structure of the project, including a description of company ownership, management, and the qualifications of key project personnel;
- 9) actual and pro forma financial statements;
- 10) schedule of project activities and key milestones;
- 11) justification of need for a State funded grant, investment, or loan; and
- 12) description of leveraged funding including letters of commitment from other investors.

## Section 545.430 Screening of Applications

The Department and/or an intermediary organization and/or a designee shall screen applications to determine that all application requirements have been addressed. Except in the case of applications submitted in accordance with Section 545.410(a), Competitive Requests for Applications, applicants will be notified of deficiencies in applications and given a minimum of one opportunity to correct such deficiencies through resubmission.

## Section 545.440 General Review Criteria

Complete applications shall be reviewed and evaluated by the Department or a designee and, if submitted by an intermediary organization on behalf of an eligible applicant, by the intermediary organization. To make this determination, the Department and/or an intermediary organization shall conduct an evaluation of each application, including the following components:

- a) Consistency with Statutory Intent - The applicant shall demonstrate that the proposed project is consistent with a purpose for which financial assistance may be provided pursuant to the requirements of this Part.
- b) Ability to Implement the Project - The applicant shall demonstrate the ability to implement the proposed project, including, if appropriate:
  - 1) identification of loans, investments, or grant share from all lenders and investors on letterhead, signed and dated;
  - 2) presentation of a project implementation schedule that demonstrates the applicant's readiness for immediate project initiation; and
  - 3) provision of written cost estimates from contractors, suppliers, and architects that support project costs.
- c) Financial Feasibility - The Department, its designee, and/or an

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- intermediary organization shall review the applicant's financial statements, including projected statements, and related information to determine the financial viability of the project.
- d) **Market Feasibility** - The applicant must demonstrate the market feasibility of the project, including, if applicable, a description of the potential users of the products or service; an analysis of the size of the potential market; the anticipated market share; and the competitive advantage the project has over existing similar products or services currently competing in the target market.
- e) **Technical Feasibility** - The Department and/or an intermediary organization may require applicants to undergo a technical feasibility analysis conducted by individuals or organizations that possess the expertise to evaluate selected technological aspects of an application. Such individuals shall have the requisite expertise to conduct such analyses, as evidenced by academic and professional credentials in the subject matter of the proposed project.
- f) **Competence of Personnel** - The applicant must demonstrate that key managers and project staff have appropriate knowledge and experience in related fields.
- g) **Private Investment and Owner Equity** - The applicant shall demonstrate that other financing with respect to the project is provided. The owner's equity to be contributed, which shall be a significant part of the business project funding, shall be verified as available and/or committed to the project.
- h) **Past Performance** - The Department, its designee, and/or an intermediary organization shall evaluate the performance of the applicant under previous Departmental programs, if applicable (e.g., success in previous projects and the level of compliance with previous agreements).

**Section 545.450 Program Specific Criteria**

- a) **Technology Challenge Grant Program** - Pursuant to the requirements of Section 2003 of the Act, applications determined by the Department to be complete shall be forwarded to the Illinois Coalition for their review and evaluation.
- 1) The Illinois Coalition shall consider the following criteria in determining recommendations to the Department:
- A) *the relationship of a proposed advanced technology project to the State's future economic growth;*
- B) *the potential for adapting, commercializing or adopting the results of the applicant's project for the economic benefit of the State; and*
- C) *the likelihood that the project has a potential for creating new jobs or retaining current jobs in the State.* [20 ILCS 700/2003(a)]
- 2) The Department shall consider the recommendations of the Illinois Coalition and the following criteria in determining grant awards:

## DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

## NOTICE OF PROPOSED RULES

- A) *the qualifications and expertise of consultants, firms or organizations undertaking the effort;*
- B) *the potential for leveraging federal or private research dollars, or both, for the initiative; and*
- C) *the extent of the capacity of the applicant or the applicant partnership or consortium to finance the initiative.* [20 ILCS 700/2003(a)]
- b) **Illinois Technology Enterprise Development and Investment Program** - The Department shall determine the viability of matching funds. Per Section 3004(a) of the Act, in determining if direct qualified security investments or loans are to be made, the Department shall find that:
- 1) *there is a likelihood of commercial feasibility given the state of development of the proposed product, process, service, or technical device; and*
- 2) *that there is a likelihood of increased job opportunities in the near term as a result of the security investment.*
- c) **Modernization Retooling Loan Program** - Per Section 3004(b) of the Act, in determining if a loan is to be provided, the Department shall determine whether there will be an expected improvement in production levels, quality of output, or timeliness of delivery and that the number of jobs to be created or retained is reasonable in relation to the loan funds requested. The applicant shall also demonstrate that the project will involve the purchase of advanced technology and other expenditures integral to technological improvement. The applicant shall demonstrate that the project will have a public benefit of providing a net increase or net retention of jobs for Illinois citizens and the project will have a private benefit of improving productivity, effectiveness, or efficiency of the firm's production activities or will increase revenues or reduce expenses.
- d) **Modernization Grants Program** - Per Section 3515(c) of the Act, the applicant shall demonstrate the level of expertise of the consultant or firm undertaking the competitiveness assessment or productivity improvement services. The applicant shall further demonstrate that the project will result in a substantial improvement in the applicant's operations and will result in the creation or retention of jobs.



DEPARTMENT OF NATURAL RESOURCES  
NOTICE OF PROPOSED RULES

- 1) Heading of the Part: Oil and Gas Wells on Public Lands Act
- 2) Code Citation: 62 Ill. Adm. Code 250
- 3) Section Numbers: Proposed Action:

250.10 New  
250.20 New  
250.30 New  
250.40 New  
250.50 New  
250.60 New  
250.70 New  
250.80 New  
250.90 New

13) Regulatory Agenda on which this rule was summarized: This rule was not included on either of the 2 most recent agendas because: The Department neglected to file a regulatory agenda on this Part.

The full text of the Proposed Rules begins on the next page:

- 4) Statutory Authority: Implementing and authorized by Section 16 of the Oil and Gas Wells on Public Lands Act [5 ILCS 615/16]

- 5) A Complete Description of the Subjects and Issues Involved: The proposed rules establish administrative procedures for the leasing of State owned land.

- 6) Will this rulemaking replace any emergency rule currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Do these proposed rules contain incorporations by reference? No

- 9) Are there any other proposed rules pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not affect units of local government.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Comments on the proposed rulemaking may be submitted in writing for a period of 45 days following publication of this notice to:

Lawrence Bengal  
Department of Natural Resources  
524 S. Second Street  
Springfield IL 62701-1787  
217/782-1809

- 12) Initial Regulatory Flexibility Analysis:

- A) Types of small businesses, small municipalities and not for profit corporations affected: None

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

TITLE 62: MINING  
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES

## PART 250

## OIL AND GAS WELLS ON PUBLIC LANDS ACT

## Section

250.10	Definitions
250.20	Designation of State Lands
250.30	Permit to Explore Unknown Territory
250.40	Granting a Lease to a Person Holding a Permit to Explore
250.50	Designation of Proven Territory
250.60	Leasing Proven Territory
250.70	Bonding Requirements
250.80	Public Notice
250.90	Public Lands Lease Notice List

AUTHORITY: Implemented and authorized by Section 16 of the Oil and Gas Wells on Public Lands Act [5 ILCS 615/16].

SOURCE: Adopted at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 250.10 Definitions

"Act" - means the Oil and Gas Wells on Public Lands Act [5 ILCS 615].

"Department" - means the Illinois Department of Natural Resources.

"Drilling unit" - means a tract of land with sufficient acreage to allow an oil and gas well to be drilled in accordance with the Illinois Oil and Gas Act and implementing rules.

"Office" - means the Office of Mines and Minerals in the Illinois Department of Natural Resources.

"Permittee" - means a person or entity who applies for and is issued a permit by the Office to explore unproven territory.

"Proven territory" - means territory so situated with reference to known producing wells as to establish the general opinion that, because of its relation to them, petroleum is contained in it. [5 ILCS 615/1]

"State owned land" - means a tract of land where the State owns 100% of the underlying mineral interests and the tract covers a large enough acreage to allow a properly spaced oil and/or gas well to be drilled in accordance with the Illinois Oil and Gas Act.

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

"Unknown territory" - means territory determined, in accordance with Section 250.20 of this Part, to lack proven petroleum reserves.

## Section 250.20 Designation of State Lands

- a) Any person may request the Office to designate a tract of State owned land, where the State owns 100% of the underlying mineral interests and the tract covers a large enough acreage to allow a properly spaced oil and/or gas well to be drilled in accordance with the Illinois Oil and Gas Act, as proven or unknown territory.
- b) If the tract of State owned land requested to be designated as proven or unknown territory is owned by the Department of Natural Resources no extraction activities shall be performed nor production equipment located on Department lands. Requests for extraction activities underlying lands owned by the Department of Natural Resources that utilize directional drilling techniques may be permitted at the discretion of the Department and will be designated in accordance with this Section. The Department shall not grant permits or leases for the extraction of oil, gas, and other petroleum deposits from the following classifications of lands if the State owns 100% of the underlying mineral interests under the proposed drilling unit:

- 1) Lands where threatened or endangered species occur, as determined pursuant to the Federal Endangered Species Act (16 USCA 1531) or the Illinois Endangered Species Act [525 ILCS 10];
- 2) Illinois Natural Area Inventory sites;
- 3) nature preserves dedicated under the Illinois Natural Areas Preservation Act [525 ILCS 30];
- 4) lands containing a wild and scenic river as designated under the Wild or Scenic River Area Act [20 ILCS 855];
- 5) lands registered under the Register of Land and Water Reserves under 17 Illinois Administrative Code 4010; and
- 6) lands on which federal or State laws or regulations prohibit the surface extraction or production facility activity. [5 ILCS 615/2]

- c) The request must be submitted to the Office in writing and include:

- 1) a legal description of the land;
  - 2) a brief synopsis of the oil and gas potential;
  - 3) documentation evidencing State ownership of the mineral rights; and
  - 4) general overview of the anticipated development or exploration plans.
- d) If the Office determines, based upon the information included in the designation request, that a tract of State owned land should be designated as unknown territory due to the lack of proven petroleum reserves, the entity submitting such request may apply for an exploration permit in accordance with Section 250.30 of this Part.
- e) If the Office determines, based upon the information included in the designation request, that a tract of State owned land should be



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

- designated as proven territory, in accordance with Section 250.50(a) and (b) of this Part, the designation request shall be processed in accordance with Section 250.50(c) of this Part.
- f) The Office will respond in writing to the inquiring party as to the final designation of the State land.

**Section 250.30 Permit to Explore Unknown Territory**

- a) Any person (applicant) may request a permit to explore for oil and gas on State owned land designated as unknown territory in accordance with Section 250.20 of this Part. The request shall not be made for more than three sections of land or equivalent acreage (1920 acres) and shall not contain any land where the oil and gas rights are not wholly owned by the State of Illinois. The request shall:
- 1) be in writing;
  - 2) describe the method of exploration contemplated;
  - 3) contain a legal description of the land for which a permit to explore is sought that includes proof satisfactory to the Office that the oil and gas rights underlying the described land are wholly owned by the State;
  - 4) articulate a general plan for future development in the event oil and/or gas is discovered.
- b) If an applicant for a permit to explore for oil and gas on State owned land complies with the provisions of subsection (a) above, the Office will direct the applicant to secure a signed agreement with the State agency owning the land to be explored, encompassing the scope of all aspects of the exploration operations contemplated by the permittee, including but not limited to:
- 1) the amount paid for damages to the surface of the land;
  - 2) the method and timing of access to the site for exploration so as to minimize interference with State programs; and
  - 3) the procedures for the mitigation of damage to the site during exploration activities and for the restoration of the site following exploration activities.
- c) If the applicant for a permit to explore for oil and gas on State owned land secures a signed agreement with the State agency owning the land to be explored that complies with subsection (b), the Department, with the approval of the Governor, shall issue the exploration permit.
- d) The permit to explore shall:
- 1) specify the provisions and requirements of the State agency owning the land;
  - 2) specify the lease provisions, in accordance with Section 250.40 of this Part;
  - 3) be valid for one year;
  - 4) be non-transferrable; and
  - 5) be limited to the following exploration activities:
    - A) seismic exploration;

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

- B) structure test holes not penetrating the oil-producing zone;
- C) remote sensing; and
- D) chemical analysis.
- e) Permittee may surrender the permit at any time and shall be relieved of all liability except for physical damage to the land and any other site mitigation and restoration activities specified in the signed agreement with the State agency that has jurisdiction over the land to be explored.

**Section 250.40 Granting a Lease to a Person Holding a Permit to Explore**

- a) If the permittee has discharged all of the conditions required by the permit to explore to the satisfaction of the Department and the State agency owning the land, as evidenced by a release issued by the State agency, and has made an application to the Department for a lease not later than on the date of expiration of the permit to explore, the Department, with the approval of the Governor, shall grant to the permittee a lease for the extraction of petroleum not to exceed one section of land or an equivalent amount of acreage (640 acres).
- b) The form of leases granted to persons holding a permit to explore shall generally follow the format of a standard commercial petroleum lease generally in use in the territory in which the oil, gas or other petroleum deposits are located and shall incorporate at a minimum the following basic lease terms and restrictions:
- 1) The lease shall be for a primary term not to exceed 10 years and for as long thereafter as oil in commercial quality and commercial quantity is produced from the lands embraced in the lease.
  - 2) The State agency with jurisdiction over the land encompassed within the lease shall receive royalties at a rate of 12 1/2 percent of the market value of the petroleum produced.
  - 3) The State agency with jurisdiction over the land encompassed within the lease shall receive an annual rental, payable in advance, of \$10 per acre, which shall be credited against future royalties.
  - 4) The lease shall not be assigned or otherwise transferred without the prior consent of the State agency with jurisdiction over the land encompassed by the lease.
- c) The leases granted to persons holding a permit to explore shall include any additional terms specified in the agreement reached with the State agency with jurisdiction over the land encompassed within the lease. These additional lease terms may include, but are not limited to, any or all of the following considerations:
- 1) the location, use, design and method of construction of the road network constructed by the lessee to gain access to the area being used for oil production and related operations;
  - 2) the location, use, design and method of construction of electric generation and transmission network constructed by the lessee for

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

- oil production and related operations;
- 3) the location, use, design and method of construction of the sites where the lessee will conduct oil production and related operations, including the location of the lessee's oil storage tanks and well sites;
  - 4) landscaping or other mitigation activities deemed necessary to preserve the environmental and aesthetic characteristics of the State land being used for oil production and related operations; and
  - 5) security and public safety considerations attendant to the lessee's oil production and related operations on State land.
- d) Any permittee who receives a lease of up to one section (640 acres) of land covered by that permittee's exploration permit shall have a preferential right to lease the remaining lands embraced by the permittee's original exploration permit. Specifically, the holder of the exploration permit has the right to lease the remaining lands by meeting the highest bid as to royalty or bonus that the Department may receive if the Department elects to offer the remainder of the lands contained in the permit to explore for lease in accordance with Section 250.60 of this Part. The Department shall notify the permittee of the time and place of the opening of bids in order that the permittee may have present a representative with authority to meet the highest bid as to royalty or bonus. The permittee's failure to have such representative present shall constitute a waiver of its preferential right under this subsection.

**Section 250.50 Designation of Proven Territory**

- a) The Office may designate any State owned land as proven territory if the Office determines that the land is underlain by recoverable oil or gas reserves based upon the producing wells in the vicinity and upon geological data in the Office's possession.
- b) The Department, with the approval of the Governor, shall request competitive bids to lease proven territory, as set forth in Section 250.60 of this Part, within 120 days after designating the State owned land as proven territory.

**Section 250.60 Leasing Proven Territory**

- a) The Department shall provide public notice, in accordance with Section 250.80 of this Part, of the availability of proven territory for lease, subject to competitive bid. The public notice of proven territory shall contain a legal description of the designated land and state that interested parties may request an "invitation for bid" from the Department.
- b) All invitations for bids developed by the Department shall:
  - 1) state the legal description of the land proposed to be leased;
  - 2) include the basic lease terms and conditions for the State owned

## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

- land, as enumerated in Section 250.40(b) of this Part;
- 3) include any additional terms specified by the State agency with jurisdiction over the land encompassed within the lease, as enumerated in but not limited to Section 250.40(c) of this Part;
  - 4) inform the bidder of the amount of the required bond; and
  - 5) state a minimum bonus payment for the acquisition of the lease in addition to the annual rental payments specified in Section 250.40(b)(3) of this Part.
- c) No less than five days prior to the opening of the sealed bids, bidder must file with the Department a bid bond (letter of credit) in the amount fixed by the Department in the invitation for bid to guarantee the posting of a performance bond in the event he is the successful bidder.
- d) At the date, time and location of the bid opening designated in the notice, the Department shall open all bids actually received. Any bid not received at the designated location on or before the designated time shall not be considered in making a determination on high bidder. The highest responsible bidder shall be contacted and offered a lease containing the terms provided by subsection (b) and for the consideration as bid, unless the proven acreage is covered by a permit to explore and a preferential right is granted in accordance with Section 250.40(d) of this Part. If the highest bidder does not wish to accept the lease, then the next highest bidder shall be contacted to lease the State owned land.
- f) After receipt of all bids, the Department may make a determination that no bid is reasonable and reject them all, notwithstanding the provisions of subsection (a). If the Department makes such a determination, the Department may again solicit bids in accordance with this Section or it may choose not to lease such land.

**Section 250.70 Bonding Requirements**

Prior to drilling any well, lessee shall file an individual well bond with the Department. The bond shall be maintained until the well is plugged and the well site restored in accordance with the Illinois Oil and Gas Act [225 ILCS 725]. The amount of the bond shall be:

- a) \$1500 for a well less than 2,000 feet deep; or
- b) \$3000 for a well 2,000 or more feet deep.

**Section 250.80 Public Notice**

All public notices, when required by the provisions of this Part, shall be made as follows:

- a) by placing a notice in one or more oil and gas industry publications distributed statewide and in the Official State Newspaper;
- b) by placing a notice in a newspaper of general circulation in the county in which the State owned land is located; and
- c) by sending notice to persons on the Office Lease Notice List in



## DEPARTMENT OF NATURAL RESOURCES

## NOTICE OF PROPOSED RULES

accordance with Section 250.90 of this Part.

**Section 250.90 Public Lands Lease Notice List**

- a) The Office shall maintain a list of persons entitled to directly receive any public notice required by this Part.
- b) To be placed on the notice list under this Section, a person must submit a written request stating that the person wishes to be placed on the list for notice of any action under this Part requiring public notice and identify the person's name and address. A written request for notice shall be valid for five years from the date of receipt by the Office. A request for notice may be renewed by submitting a new written request.

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medical Assistance Programs

- 2) Code Citation: 89 Ill. Adm. Code 120

- 3) Section Numbers: Proposed Action:  
120.399 Amendment  
120.510 New Section

- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ICS 5/12-13], the Federal Ticket to Work and Work Incentives Act of 1999 and Public Act 91-0712

- 5) Complete Description of the Subjects and Issues Involved: This new rule is being proposed to implement a medical assistance program for certain employed persons with disabilities in accordance with the federal Ticket to Work and Work Incentives Improvement Act and Public Act 91-0712. This new program, Health Benefits for Workers with Disabilities (HBWD), will allow persons with disabilities who return to work or whose earnings increase, and who would otherwise lose medical assistance, to pay premiums and thereby buy-in for coverage under the Department's medical assistance program. The income limit for participants in HBWD is set at 200 percent of the Federal Poverty Level.

The proposed provisions concerning HBWD describe eligibility criteria, income considerations and asset exemptions, the application process, authorization of medical assistance coverage, employment requirements and premium amount determinations. Eligible persons must be 16 through 64 years of age. Cost sharing charges (premiums) will be imposed, as allowed under federal law, on a sliding scale according to the gross unearned income and countable earned income of each participant. The medical coverage provided for eligible persons under HBWD will be the same as benefits provided to all other persons covered under medical assistance. Additionally, proposed changes at Section 120.399 regarding frequency of redeterminations of eligibility align the rules with federal policy and current practice.

Companion amendments, which provide for an appeal process concerning the determination of premium amounts imposed under HBWD, are being proposed at 89 Ill. Adm Code 102.80.

This proposed rulemaking, which has been developed in conjunction with advocates for persons with disabilities, is expected to result in an annual expenditure of approximately \$10 million upon full implementation.

- 6) Will these proposed amendments replace emergency amendments currently in effect? No

- 7) Does these rulemaking contain an automatic repeal date? No

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes

Sections Proposed Action    Illinois Register Citation  
120.500 Amendment    August 17, 2001 (25 Ill. Reg. 10304)

- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 13) Regulatory Agenda on Which this Rulemaking Was Summarized: July 2001
- The full text of the Proposed Amendments begins on the next page:



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER b: ASSISTANCE PROGRAMS

## PART 120

## MEDICAL ASSISTANCE PROGRAMS

## SUBPART A: GENERAL PROVISIONS

Section  
120.1 Incorporation By Reference

## SUBPART B: ASSISTANCE STANDARDS

Section  
120.10 Eligibility For Medical Assistance  
120.11 MANG(P) Eligibility  
120.12 Healthy Start - Medicaid Presumptive Eligibility Program For Pregnant Women  
120.20 MANG(RABD) Income Standard  
120.30 MANG(C) Income Standard  
120.31 MANG(P) Income Standard  
120.40 Exceptions To Use Of MANG Income Standard  
120.50 AMI Income Standard (Repealed)

## SUBPART C: FINANCIAL ELIGIBILITY DETERMINATION

Section  
120.60 Cases Other Than Long Term Care, Pregnant Women and Certain Children  
120.61 Cases in Intermediate Care, Skilled Nursing Care and DMHDD - MANG(RABD) and All Other Licensed Medical Facilities  
120.62 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings Under 89 Ill. Adm. Code 140.643  
120.63 Department of Mental Health and Developmental Disabilities (DMHDD) Approved Home and Community Based Residential Settings  
120.64 MANG(P) Cases  
120.65 Department of Mental Health and Developmental Disabilities (DMHDD) Licensed Community - Integrated Living Arrangements

## SUBPART D: SUPPLEMENTARY MEDICAL INSURANCE

Section  
120.70 Supplementary Medical Insurance Benefits (SMIB) Buy-In Program  
120.72 Eligibility for Medicare Cost Sharing as a Qualified Medicare Beneficiary (QMB)  
120.73 Eligibility for Medicaid Payment of Medicare Part B Premiums as a Specified Low-Income Medicare Beneficiary (SLIB)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

120.74 Qualified Medicare Beneficiary (QMB) Income Standard  
120.75 Specified Low-Income Medicare Beneficiary (SLIB) Income Standards  
120.76 Hospital Insurance Benefits (HIB)

## SUBPART E: RECIPIENT RESTRICTION PROGRAM

Section  
120.80 Recipient Restriction Program

## SUBPART F: MIGRANT MEDICAL PROGRAM

Section  
120.90 Migrant Medical Program (Repealed)  
120.91 Income Standards (Repealed)

## SUBPART G: AID TO THE MEDICALLY INDIGENT

Section  
120.200 Elimination of Aid to The Medically Indigent  
120.208 Client Cooperation (Repealed)  
120.210 Citizenship (Repealed)  
120.211 Residence (Repealed)  
120.212 Age (Repealed)  
120.215 Relationship (Repealed)  
120.216 Living Arrangement (Repealed)  
120.217 Supplemental Payments (Repealed)  
120.218 Institutional Status (Repealed)  
120.224 Foster Care Program (Repealed)  
120.225 Social Security Numbers (Repealed)  
120.230 Unearned Income (Repealed)  
120.235 Exempt Unearned Income (Repealed)  
120.236 Education Benefits (Repealed)  
120.240 Unearned Income In-Kind (Repealed)  
120.245 Earmarked Income (Repealed)  
120.250 Lump Sum Payments and Income Tax Refunds (Repealed)  
120.255 Protected Income (Repealed)  
120.260 Earned Income (Repealed)  
120.261 Budgeting Earned Income (Repealed)  
120.262 Exempt Earned Income (Repealed)  
120.270 Recognized Employment Expenses (Repealed)  
120.271 Income From Work/Study/Training Program (Repealed)  
120.272 Earned Income From Self-Employment (Repealed)  
120.273 Earned Income From Roomer and Boarder (Repealed)  
120.275 Earned Income In-Kind (Repealed)  
120.276 Payments from the Illinois Department of Children and Family Services (Repealed)  
120.280 Assets (Repealed)  
120.281 Exempt Assets (Repealed)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

120.282	Asset Disregards (Repealed)
120.283	Deferral of Consideration of Assets (Repealed)
120.284	Spend-down of Assets (AMI) (Repealed)
120.285	Property Transfers (Repealed)
120.290	Persons Who May Be Included in the Assistance Unit (Repealed)
120.295	Payment Levels for AMI (Repealed)
SUBPART H: MEDICAL ASSISTANCE - NO GRANT	
Section	
120.308	Client Cooperation
120.309	Caretaker Relative
120.310	Citizenship
120.311	Residence
120.312	Age
120.313	Blind
120.314	Disabled
120.315	Relationship
120.316	Living Arrangements
120.317	Supplemental Payments
120.318	Institutional Status
120.319	Assignment of Rights to Medical Support and Collection of Payment
120.320	Cooperation in Establishing Paternity and Obtaining Medical Support
120.321	Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
120.322	Proof of Good Cause for Failure to Cooperate in Establishing Paternity and Obtaining Medical Support
120.323	Suspension of Paternity Establishment and Obtaining Medical Support Upon Finding Good Cause
120.324	Health Insurance Premium Payment (HIPP) Program
120.325	Health Insurance Premium Payment (HIPP) Pilot Program
120.326	Foster Care Program
120.327	Social Security Numbers
120.330	Unearned Income
120.332	Budgeting Unearned Income
120.335	Exempt Unearned Income
120.336	Education Benefits
120.338	Incentive Allowance
120.340	Unearned Income In-Kind
120.342	Court Ordered Child Support Payments of Parent/Step-Parent
120.345	Earmarked Income
120.346	Medicaid Qualifying Trusts
120.347	Treatment of Trusts
120.350	Lump Sum Payments and Income Tax Refunds
120.355	Protected Income
120.360	Earned Income
120.361	Budgeting Earned Income
120.362	Exempt Earned Income

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

120.363	Earned Income Disregard - MANG(C)
120.364	Earned Income Exemption
120.366	Exclusion From Earned Income Exemption
120.370	Recognized Employment Expenses
120.371	Income From Work/Study/Training Programs
120.372	Earned Income From Self-Employment
120.373	Earned Income From Roomer and Boarder
120.375	Earned Income In Kind
120.376	Payments from the Illinois Department of Children and Family Services
120.379	Provisions for the Prevention of Spousal Impoverishment
120.380	Assets
120.381	Exempt Assets
120.382	Asset Disregard
120.383	Deferral of Consideration of Assets
120.384	Spend-down of Assets (AABD MANG)
120.385	Property Transfers for Applications Filed Prior to October 1, 1989 (Repealed)
120.386	Property Transfers Occurring On or Before August 10, 1993
120.387	Property Transfers Occurring On or After August 11, 1993
120.390	Persons Who May Be Included in the Assistance Unit
120.391	Individuals Under Age 18 Who Do Not Qualify For AFDC/AFDC-MANG and Children Born October 1, 1983, or Later
120.392	Pregnant Women Who Would Not Be Eligible For AFDC/AFDC-MANG If The Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy
120.393	Pregnant Women and Children Under Age Eight Years Who Do Not Qualify As Mandatory Categorically Needy Demonstration Project
120.395	Payment Levels for MANG (Repealed)
120.399	Redetermination of Eligibility
120.400	Twelve Month Eligibility for Persons under Age 19
SUBPART I: SPECIAL PROGRAMS	
120.510	Health Benefits for Workers with Disabilities
TABLE A	Value of a Life Estate and Remainder Interest
TABLE B	Life Expectancy
AUTHORITY: Implementing Articles III, IV, V and VI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V and VI and 12-13].	
SOURCE: Filed effective December 30, 1977; peremptory amendment at 2 Ill. Reg. 17, p. 117, effective February 1, 1978; amended at 2 Ill. Reg. 31, p. 134, effective August 5, 1978; emergency amendment at 2 Ill. Reg. 37, p. 4, effective August 30, 1978, for a maximum of 150 days; peremptory amendment at 2 Ill. Reg. 46, p. 44, effective November 1, 1978; peremptory amendment at 2 Ill. Reg. 46, p. 56, effective November 1, 1978; emergency amendment at 3 Ill. Reg.	



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

16, p. 41, effective April 9, 1979, for a maximum of 150 days; emergency amendment at 3 Ill. Reg. 28, p. 182, effective July 1, 1979, for a maximum of 150 days; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 33, p. 415, effective August 18, 1979; amended at 3 Ill. Reg. 38, p. 243, effective September 21, 1979; peremptory amendment at 3 Ill. Reg. 38, p. 321, effective September 7, 1979; amended at 3 Ill. Reg. 40, p. 140, effective October 6, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 22, 1980; amended at 4 Ill. Reg. 10, p. 258, effective February 25, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; amended at 4 Ill. Reg. 27, p. 387, effective June 24, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for a maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 37, p. 800, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 27, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1134, effective January 26, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; amended at 5 Ill. Reg. 7104, effective June 23, 1981; amended at 5 Ill. Reg. 8041, effective July 27, 1981; amended at 5 Ill. Reg. 8052, effective July 24, 1981; peremptory amendment at 5 Ill. Reg. 8106, effective August 1, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10079, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10095, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10113, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10124, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 10131, effective October 1, 1981; amended at 5 Ill. Reg. 10730, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 10760, effective October 1, 1981; amended at 5 Ill. Reg. 10767, effective October 1, 1981; peremptory amendment at 5 Ill. Reg. 11647, effective October 16, 1981; peremptory amendment at 6 Ill. Reg. 611, effective January 1, 1982; amended at 6 Ill. Reg. 1216, effective January 14, 1982; emergency amendment at 6 Ill. Reg. 2447, effective March 1, 1982, for a maximum of 150 days; peremptory amendment at 6 Ill. Reg. 2452, effective February 11, 1982; peremptory amendment at 6 Ill. Reg. 6475, effective May 18, 1982; peremptory amendment at 6 Ill. Reg. 6912, effective May 20, 1982; emergency amendment at 6 Ill. Reg. 7299, effective June 2, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 8115, effective July 1, 1982; amended at 6 Ill. Reg. 8142, effective July 1, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10970, effective August 26, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12293, effective October 1, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 6082; amended at 7 Ill. Reg. 8256, effective July 1, 1983; amended at 7 Ill. Reg. 8284, effective July 5, 1983; amended (by adding Section being codified with no substantive change) at 7 Ill. Reg. 14747; amended (by adding Sections being codified with no substantive

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

change) at 7 Ill. Reg. 16108; amended at 8 Ill. Reg. 5253, effective April 9, 1984; amended at 8 Ill. Reg. 6770, effective April 27, 1984; amended at 8 Ill. Reg. 13328, effective July 16, 1984; amended (by adding Sections being codified with no substantive change) at 8 Ill. Reg. 17897; amended at 8 Ill. Reg. 18903, effective September 26, 1984; peremptory amendment at 8 Ill. Reg. 20706, effective October 3, 1984; amended at 8 Ill. Reg. 25053, effective December 12, 1984; emergency amendment at 9 Ill. Reg. 830, effective January 3, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 4515, effective March 25, 1985; amended at 9 Ill. Reg. 5346, effective April 11, 1985; amended at 9 Ill. Reg. 7153, effective May 6, 1985; amended at 9 Ill. Reg. 11346, effective July 8, 1985; amended at 9 Ill. Reg. 12298, effective July 25, 1985; amended at 9 Ill. Reg. 12823, effective August 9, 1985; amended at 9 Ill. Reg. 15903, effective October 4, 1985; amended at 9 Ill. Reg. 16300, effective October 10, 1985; amended at 9 Ill. Reg. 16906, effective October 18, 1985; amended at 10 Ill. Reg. 1192, effective January 10, 1986; amended at 10 Ill. Reg. 3033, effective January 23, 1986; amended at 10 Ill. Reg. 4907, effective March 7, 1986; amended at 10 Ill. Reg. 6966, effective April 16, 1986; amended at 10 Ill. Reg. 10688, effective June 3, 1986; amended at 10 Ill. Reg. 12672, effective July 14, 1986; amended at 10 Ill. Reg. 15649, effective September 19, 1986; amended at 11 Ill. Reg. 3992, effective February 23, 1987; amended at 11 Ill. Reg. 7652, effective April 15, 1987; amended at 11 Ill. Reg. 8735, effective April 20, 1987; emergency amendment at 11 Ill. Reg. 12458, effective July 10, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 14034, effective August 14, 1987; amended at 11 Ill. Reg. 14763, effective August 26, 1987; amended at 11 Ill. Reg. 20142, effective January 1, 1988; amended at 11 Ill. Reg. 20898, effective December 14, 1987; amended at 12 Ill. Reg. 904, effective January 1, 1988; amended at 12 Ill. Reg. 3516, effective January 22, 1988; amended at 12 Ill. Reg. 6234, effective March 22, 1988; amended at 12 Ill. Reg. 8672, effective May 13, 1988; amended at 12 Ill. Reg. 9132, effective May 20, 1988; amended at 12 Ill. Reg. 11483, effective June 30, 1988; emergency amendment at 12 Ill. Reg. 11632, effective July 1, 1988, for a maximum of 150 days; emergency amendment at 12 Ill. Reg. 11839, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12835, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 13243, effective July 29, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 17867, effective October 30, 1988; amended at 12 Ill. Reg. 19704, effective November 15, 1988; amended at 12 Ill. Reg. 20188, effective November 23, 1988; amended at 13 Ill. Reg. 116, effective January 1, 1989; amended at 13 Ill. Reg. 2081, effective February 3, 1989; amended at 13 Ill. Reg. 3908, effective March 10, 1989; emergency amendment at 13 Ill. Reg. 11929, effective June 27, 1989, for a maximum of 150 days; emergency expired November 25, 1989; emergency amendment at 13 Ill. Reg. 12137, effective July 1, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 15404, effective October 6, 1989; emergency amendment at 13 Ill. Reg. 16586, effective October 2, 1989, for a maximum of 150 days; emergency expired March 1, 1990; amended at 13 Ill. Reg. 17483, effective October 31, 1989; amended at 13 Ill. Reg. 17838, effective November 8, 1989; amended at 13 Ill. Reg. 18872, effective November 17, 1989; amended at 14 Ill. Reg. 760, effective January 1, 1990; emergency amendment at 14 Ill. Reg. 1494, effective January 2, 1990, for

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

a maximum of 150 days; amended at 14 Ill. Reg. 4233, effective March 5, 1990; emergency amendment at 14 Ill. Reg. 5839, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 6372, effective April 16, 1990; amended at 14 Ill. Reg. 7637, effective May 10, 1990; amended at 14 Ill. Reg. 10396, effective June 20, 1990; amended at 14 Ill. Reg. 13227, effective August 6, 1990; amended at 14 Ill. Reg. 14814, effective September 3, 1990; amended at 14 Ill. Reg. 17004, effective September 30, 1990; emergency amendment at 15 Ill. Reg. 348, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 5302, effective April 1, 1991; amended at 15 Ill. Reg. 10101, effective June 24, 1991; amended at 15 Ill. Reg. 11973, effective August 12, 1991; amended at 15 Ill. Reg. 12747, effective August 16, 1991; amended at 15 Ill. Reg. 14105, effective September 11, 1991; amended at 15 Ill. Reg. 14240, effective September 23, 1991; amended at 16 Ill. Reg. 139, effective December 24, 1991; amended at 16 Ill. Reg. 1862, effective January 20, 1992; amended at 16 Ill. Reg. 10034, effective June 15, 1992; amended at 16 Ill. Reg. 11582, effective July 15, 1992; amended at 16 Ill. Reg. 17290, effective November 3, 1992; amended at 17 Ill. Reg. 1102, effective January 15, 1993; amended at 17 Ill. Reg. 6827, effective April 21, 1993; amended at 17 Ill. Reg. 10402, effective June 28, 1993; amended at 18 Ill. Reg. 2051, effective January 21, 1994; amended at 18 Ill. Reg. 5934, effective April 1, 1994; amended at 18 Ill. Reg. 8718, effective June 1, 1994; amended at 18 Ill. Reg. 11231, effective July 1, 1994; amended at 19 Ill. Reg. 2905, effective February 27, 1995; emergency amendment at 19 Ill. Reg. 9280, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 11931, effective August 11, 1995; amended at 19 Ill. Reg. 15079, effective October 17, 1995; amended at 20 Ill. Reg. 5068, effective March 20, 1996; amended at 20 Ill. Reg. 15993, effective December 9, 1996; emergency amendment at 21 Ill. Reg. 692, effective January 1, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7423, effective May 31, 1997; amended at 21 Ill. Reg. 7748, effective June 9, 1997; amended at 21 Ill. Reg. 11555, effective August 1, 1997; amended at 21 Ill. Reg. 13638, effective October 1, 1997; emergency amendment at 22 Ill. Reg. 1576, effective January 5, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 7003, effective April 1, 1998; amended at 22 Ill. Reg. 8503, effective May 1, 1998; amended at 22 Ill. Reg. 16291, effective August 28, 1998; emergency amendment at 22 Ill. Reg. 16640, effective September 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 19875, effective October 30, 1998; amended at 23 Ill. Reg. 2381, effective January 22, 1999; amended at 23 Ill. Reg. 11301, effective August 27, 1999; amended at 24 Ill. Reg. 7361, effective May 1, 2000; emergency amendment at 24 Ill. Reg. 10425, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15075, effective October 1, 2000; amended at 24 Ill. Reg. 18309, effective December 1, 2000; amended at 25 Ill. Reg. 8783, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 10533, effective August 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART H: MEDICAL ASSISTANCE - NO GRANT

## Section 120.399 Redetermination of Eligibility

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

It is the Department's responsibility to determine the continued eligibility of all recipients of medical assistance and it is the recipient's responsibility to cooperate in the redetermination of eligibility. A redetermination of eligibility shall be conducted at least every twelve months and at any time it becomes known to the Department that a recipient's circumstances affecting eligibility may have changed.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.)

## SUBPART I: SPECIAL PROGRAMS

## Section 120.510 Health Benefits for Workers with Disabilities

a) To be eligible for medical assistance under Health Benefits for Workers with Disabilities, an individual must meet all of the following eligibility requirements:

- 1) Cooperate in establishing eligibility as described in Section 120.308.
  - 2) Meet citizenship/immigration status as described in Section 120.310.
  - 3) Meet residency requirements as described in Section 120.311.
  - 4) Be disabled as described in Section 120.314.
  - 5) Assign rights to medical support and collection of payment as described in Section 120.319.
  - 6) Furnish a Social Security number(s) as described in Section 120.327.
  - 7) Be 16 through 64 years of age.
  - 8) Have countable monthly income at or below 200 percent of the Federal Poverty Level.
  - 9) Have non-exempt assets at or below \$10,000.
  - 10) Be employed pursuant to subsection (1)(1) of this Section or qualify for an exception as described in subsection (1)(2) of this Section.
  - 11) Pay a premium pursuant to subsections (m) and (n) of this Section.
- b) An individual shall not be determined eligible if the individual is otherwise eligible for medical assistance without a spenddown.
- c) An individual who is otherwise eligible for medical assistance with a spenddown, who meets the requirements of this Section, shall have the option of enrolling in medical assistance with a spenddown or Health Benefits for Workers with Disabilities.
- d) An individual's eligibility shall be terminated if the individual no longer meets the requirements of this Section.
- e) Certain assets shall be exempt from consideration in determining eligibility in accordance with Section 120.381.
- f) The earned and unearned income of the following persons shall be counted when determining eligibility, except as specified in



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

subsections (g), (h) and (i) of this Section.

- 1) Income of the individual.
- 2) Income of the spouse.
- 3) Unearned income of a dependent child under the age of 18 years who is included in the income standard (see Section 120.20) because it is to the advantage of the individual.
- g) Monthly unearned income shall be counted as described in Sections 120.330 through 120.345, and Sections 120.350, 120.355, 120.371 and 120.376, except that the \$25 exemption specified in Section 120.335(a)(1) shall not be allowed.
- h) Monthly earned income shall be considered as described in Sections 120.360, 120.361, 120.371, 120.372, 120.373 and 120.375.
- i) The greater of subsection (i)(1) or (i)(2) of this Section shall be used in determining the monthly earned income disregard and exemption for the individual, except that the Department shall only calculate the earned income disregard and exemption under subsection (i)(2) if the individual provides verification of the expenses.
  - 1) The first \$125 of monthly gross earnings of the individual shall be exempt. If earned income is less than \$125, the entire amount shall not be counted. In addition, if the combined gross monthly earnings of the individual and spouse exceed \$500, 25 percent of the amount over \$500 shall be exempt; or
  - 2) The Department shall exempt earned income as provided in Section 120.362(a) and (b)(1). In addition, work related expenses that are allowed as deductions for MANG AABD as described in Section 120.370 shall be deducted.

## j) Application Process

- 1) Individuals can apply by:
  - A) Completing an application provided by the Department and submitting it to an address specified by the Department; or
  - B) Additional methods that the Department establishes.
- 2) The application must meet all requirements found at 89 Ill. Adm. Code 110.10(a), (c), (e) and (i).
- k) Authorization of Medical Assistance Eligibility
  - 1) Medical assistance coverage will not be provided for any month for which eligibility is established unless a premium is paid in accordance with subsections (m) and (n) of this Section.
  - 2) Subject to subsections (k)(2)(A), (B) and (C) of this Section, the applicant may choose to receive medical assistance for months prior to the initial month of prospective eligibility as determined in accordance with subsections (m) and (n) of this Section.
    - A) Eligibility will be effective no earlier than the third month before the month of application if the applicant received covered medical services during that period and would have been eligible if he or she had applied for Health Benefits for Workers with Disabilities.
    - B) Months of backdated coverage selected must be consecutive

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

and must be continuous with the initial month of prospective eligibility.

- C) Monthly premiums must be paid for all the months of coverage.
- 1) Individuals Considered Employed
  - 1) For purposes of this program, an individual shall be considered employed if the individual provides verification that current payment under the Federal Insurance Contributions Act (FICA) or Illinois Municipal Retirement Fund (IMRF) has been made on behalf of the individual.
  - 2) Under the following circumstances, an individual may be enrolled in this program without providing evidence of employment as described in subsection (1)(1) of this Section:
    - A) Individuals who are not employed at the time of application, but who can verify that they will be employed within 60 days, may be enrolled but will not be considered eligible until they begin employment and pay the appropriate premium in accordance with subsections (m) and (n) of this Section.
    - B) Individuals who become unable to work for medical reasons after enrollment in this program who wish to remain in the program. Such individuals:
      - i) Must report to the Department within 30 days after the first day that they were unable to work.
      - ii) Must provide a physician's written statement that they are unable to work, but that the anticipated date for the return to work is within 90 days after the first day they were unable to work.
      - iii) Must pay premiums in accordance with subsections (m) and (n) of this Section for the months during which they do not work.
  - C) Individuals who cease employment for any other reason may continue to be enrolled for 30 days after the employment ends provided they pay premiums in accordance with subsections (m) and (n) of this Section for the period during which they do not work.
- 3) Eligibility shall be terminated:
  - A) If an individual determined to be employed according to subsection (1)(2)(A) of this Section does not provide evidence of employment pursuant to subsection (1)(1) of this Section within 30 days after enrollment.
  - B) If an individual is unable to work for medical reasons, as described in subsection (1)(2)(B) of this Section, for 90 days or more.
  - C) If an individual ceases employment for any other reason (subsection (1)(2)(C) of this Section) and does not obtain new employment within 30 days after cessation of employment.
- m) Premiums
  - 1) The Department must receive payment of the monthly premium for an

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

applicant's initial prospective month of eligibility before the applicant can be enrolled in this program. If payment of the premium is received by the 20th day of the month, the initial month of prospective eligibility shall begin the first day of the following month. (For example, if the premium payment is received on February 20, coverage shall begin on March 1. If the premium payment is received after February 20, coverage shall begin on April 1.)

- 2) Premiums for months of backdated coverage must be paid within 90 days after the date of the notice of eligibility approval.
- 3) Subsequent premiums are due on the last day of the month prior to the month of coverage.
- 4) If payment of the premium is not received in full by the end of the month following the due date of the premium, coverage will terminate effective the end of the second month following the due date and collection action may be initiated by the Department for the unpaid premiums for months of coverage.

## n) Determination of Premium Amount

- 1) Premiums shall be based upon an individual's combined gross unearned and countable earned income as determined at the point of application or review or redetermination of eligibility.
- 2) The Department shall reset a premium prospectively based on verified income.
- 3) Premium amounts shall be established as set forth in the following monthly premium table.

## Gross Unearned Income

Countable Earned Income	\$0-\$250	\$250-\$500	\$500-\$750	\$750-\$1000	Over \$1000
	\$0	\$251	\$501	\$751	
	to	to	to	to	Over
	\$250	\$500	\$750	\$1000	\$1000
	---	\$19	\$38	\$56	\$ 75
	\$ 6	\$25	\$44	\$63	\$ 81
	\$13	\$31	\$50	\$69	\$ 88
	\$19	\$38	\$56	\$75	\$ 94
	\$25	\$44	\$63	\$81	\$100

(Source: Added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Medical Payment
- 2) Code Citation: 89 Ill. Adm. Code 140
- 3) Section Numbers: Proposed Action:  
140.513 New Section
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]

- 5) Complete Description of the Subjects and Issues Involved: These proposed amendments pertain to notification requirements for long term care facilities (LTCs) concerning changes in resident status. These changes, affecting Medicaid funded nursing facilities and facilities for persons with developmental disabilities, have resulted from a finding on Department overpayments that delays in notifications of resident discharge and death result in subsequent overpayments to long term care facilities.

Caseworkers of the Department of Human Services (DHS) manage LTC cases and enter relevant data from the facilities into the payment system. Timely notifications to DHS regarding changes in resident status are essential in avoiding incidences of overpayment. Under these proposed amendments, LTC facilities are required to submit a notification of resident change within five working days after the change. For changes in resident status, including death and discharge, a facility must submit an original copy of the notification on the Department's approved form, and in the case of a death, a facility must also submit notification by way of a telefax transmittal. These changes are expected to reduce the likelihood of late notifications on changes in resident status, and thereby decrease incidences of overpayments to LTC facilities.

- 6) Will this proposed amendment replace emergency amendment currently in effect? No

- 7) Does this rulemaking contain an automatic repeal date? No

- 8) Does this proposed amendments contain incorporations by reference? No

- 9) Are there any other proposed amendments pending on this Part? Yes

Sections	Proposed Action	Illinois Register Citation
140.11	Amendment	July 6, 2001 (25 Ill. Reg. 8098)
140.400	Amendment	March 16, 2001 (25 Ill. Reg. 3806)
140.435	Amendment	March 16, 2001 (25 Ill. Reg. 3806)
140.436	Amendment	March 16, 2001 (25 Ill. Reg. 3806)
140.445	Amendment	June 29, 2001 (25 Ill. Reg. 7808)
140.447	Amendment	June 29, 2001 (25 Ill. Reg. 7808)



DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

140.475 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.476 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.477 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.478 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.479 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.480 Amendment June 1, 2001 (25 Ill. Reg. 6855)  
140.850 Amendment April 20, 2001 (25 Ill. Reg. 5600)  
140.855 Amendment April 20, 2001 (25 Ill. Reg. 5600)

10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Medicaid funded long term care facilities

B) Reporting, bookkeeping or other procedures required for compliance:  
None

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on Which this Rulemaking Was Summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: This rulemaking was inadvertently omitted when the most recent regulatory agenda was published.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER d: MEDICAL PROGRAMS

PART 140  
MEDICAL PAYMENT

## SUBPART A: GENERAL PROVISIONS

Section  
140.1 Incorporation By Reference  
140.2 Medical Assistance Programs  
140.3 Covered Services Under Medical Assistance Programs  
140.4 are 18 years of age or older (Repealed)  
140.5 Covered Medical Services Under General Assistance  
140.6 Medical Services Not Covered  
140.7 Medical Assistance Provided to Individuals Under the Age of Eighteen Who Do Not Qualify for AFDC and Children Under Age Eight  
140.8 Medical Assistance For Qualified Severely Impaired Individuals  
140.9 Medical Assistance for a Pregnant Woman Who Would Not Be Categorically Eligible for AFDC/AFDC-MANG if the Child Were Already Born Or Who Do Not Qualify As Mandatory Categorically Needy  
140.10 Medical Assistance Provided to Incarcerated Persons

## SUBPART B: MEDICAL PROVIDER PARTICIPATION

Section  
140.11 Enrollment Conditions for Medical Providers  
140.12 Participation Requirements for Medical Providers  
140.13 Definitions  
140.14 Denial of Application to Participate in the Medical Assistance Program  
140.15 Recovery of Money  
140.16 Termination or Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program  
140.17 Suspension of a Vendor's Eligibility to Participate in the Medical Assistance Program  
140.18 Effect of Termination on Individuals Associated with Vendor  
140.19 Application to Participate or for Reinstatement Subsequent to Termination, Suspension or Barring  
140.20 Submittal of Claims  
140.21 Covered Medicaid Services for Qualified Medicare Beneficiaries (QMBs)  
140.22 Magnetic Tape Billings (Repealed)  
140.23 Payment of Claims  
140.24 Payment Procedures  
140.25 Overpayment or Underpayment of Claims  
140.26 Payment to Factors Prohibited

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

140.27 Assignment of Vendor Payments  
140.28 Record Requirements for Medical Providers  
140.30 Audits  
140.31 Emergency Services Audits  
140.32 Prohibition on Participation, and Special Permission for Participation  
140.33 Publication of List of Terminated, Suspended or Barred Entities  
140.35 False Reporting and Other Fraudulent Activities  
140.40 Prior Approval for Medical Services or Items  
140.41 Prior Approval in Cases of Emergency  
140.42 Limitation on Prior Approval  
140.43 Post Approval for items or Services When Prior Approval Cannot Be Obtained  
140.55 Recipient Eligibility Verification (REV) System  
140.71 Reimbursement for Medical Services Through the Use of a C-13 Invoice  
140.72 Voucher Advance Payment and Expedited Payments  
140.73 Drug Manual Updates (Recodified)

## SUBPART C: PROVIDER ASSESSMENTS

Section  
140.80 Hospital Provider Fund  
140.82 Developmentally Disabled Care Provider Fund  
140.84 Long Term Care Provider Fund  
140.94 Medicaid Developmentally Disabled Provider Participation Fee Trust Fund/Medicaid Long Term Care Provider Participation Fee Trust Fund  
140.95 Hospital Services Trust Fund  
140.96 General Requirements (Recodified)  
140.97 Special Requirements (Recodified)  
140.98 Covered Hospital Services (Recodified)  
140.99 Hospital Services Not Covered (Recodified)  
140.100 Limitation On Hospital Services (Recodified)  
140.101 Transplants (Recodified)  
140.102 Heart Transplants (Recodified)  
140.103 Liver Transplants (Recodified)  
140.104 Bone Marrow Transplants (Recodified)  
140.110 Disproportionate Share Hospital Adjustments (Recodified)  
140.116 Payment for Inpatient Services for GA (Recodified)  
140.117 Hospital Outpatient and Clinic Services (Recodified)  
140.200 Payment for Hospital Services During Fiscal Year 1982 (Recodified)  
140.201 Payment for Hospital Services After June 30, 1982 (Repealed)  
140.202 Payment for Hospital Services During Fiscal Year 1983 (Recodified)  
140.203 Limits on Length of Stay by Diagnosis (Recodified)  
140.300 Payment for Pre-operative Days and Services Which Can Be Performed in an Outpatient Setting (Recodified)  
140.350 Copayments (Recodified)  
140.360 Payment Methodology (Recodified)



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

140.361 Non-Participating Hospitals (Recodified)  
 140.362 Pre July 1, 1989 Services (Recodified)  
 140.363 Post June 30, 1989 Services (Recodified)  
 140.364 Prepayment Review (Recodified)  
 140.365 Base Year Costs (Recodified)  
 140.366 Restructuring Adjustment (Recodified)  
 140.367 Inflation Adjustment (Recodified)  
 140.368 Volume Adjustment (Repealed)  
 140.369 Groupings (Recodified)  
 140.370 Rate Calculation (Recodified)  
 140.371 Payment (Recodified)  
 140.372 Review Procedure (Recodified)  
 140.373 Utilization (Repealed)  
 140.374 Alternatives (Recodified)  
 140.375 Exemptions (Recodified)  
 140.376 Utilization, Case-Mix and Discretionary Funds (Repealed)  
 140.390 Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.391 Definitions (Recodified)  
 140.392 Types of Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.394 Payment for Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.396 Rate Appeals for Subacute Alcoholism and Substance Abuse Services (Recodified)  
 140.398 Hearings (Recodified)

## SUBPART D: PAYMENT FOR NON-INSTITUTIONAL SERVICES

Section  
 140.400 Payment to Practitioners, Nurses and Laboratories  
 140.410 Physicians' Services  
 140.411 Covered Services By Physicians  
 140.412 Services Not Covered By Physicians  
 140.413 Limitation on Physician Services  
 140.414 Requirements for Prescriptions and Dispensing of Pharmacy Items - Physicians  
 140.416 Optometric Services and Materials  
 140.417 Limitations on Optometric Services  
 140.418 Department of Corrections Laboratory  
 140.420 Dental Services  
 140.421 Limitations on Dental Services  
 140.422 Requirements for Prescriptions and Dispensing Items of Pharmacy Items - Dentists  
 140.425 Podiatry Services  
 140.426 Limitations on Podiatry Services  
 140.427 Requirement for Prescriptions and Dispensing of Pharmacy Items - Podiatry  
 140.428 Chiropractic Services

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

140.429 Limitations on Chiropractic Services (Repealed)  
 140.430 Independent Clinical Laboratory Services  
 140.431 Services Not Covered by Independent Clinical Laboratories  
 140.432 Limitations on Independent Clinical Laboratory Services  
 140.433 Payment for Clinical Laboratory Services  
 140.434 Record Requirements for Independent Clinical Laboratories  
 140.435 Nurse Services  
 140.436 Limitations on Nurse Services  
 140.438 Imaging Centers  
 140.440 Pharmacy Services  
 140.441 Pharmacy Services Not Covered  
 140.442 Prior Approval of Prescriptions  
 140.443 Filling of Prescriptions  
 140.444 Compounded Prescriptions  
 140.445 Legend Prescription Items (Not Compounded)  
 140.446 Over-the-Counter Items  
 140.447 Reimbursement  
 140.448 Returned Pharmacy Items  
 140.449 Payment of Pharmacy Items  
 140.450 Record Requirements for Pharmacies  
 140.451 Prospective Drug Review and Patient Counseling  
 140.452 Mental Health Clinic Services  
 140.453 Definitions  
 140.454 Types of Mental Health Clinic Services  
 140.455 Payment for Mental Health Clinic Services  
 140.456 Hearings  
 140.457 Therapy Services  
 140.458 Prior Approval for Therapy Services  
 140.459 Payment for Therapy Services  
 140.460 Clinic Services  
 140.461 Clinic Participation, Data and Certification Requirements  
 140.462 Covered Services in Clinics  
 140.463 Clinic Service Payment  
 140.464 Healthy Moms/Healthy Kids Managed Care Clinics (Repealed)  
 140.465 Speech and Hearing Clinics (Repealed)  
 140.466 Rural Health Clinics  
 140.467 Independent Clinics  
 140.469 Hospice  
 140.470 Home Health Services  
 140.471 Home Health Covered Services  
 140.472 Types of Home Health Services  
 140.473 Prior Approval for Home Health Services  
 140.474 Payment for Home Health Services  
 140.475 Medical Equipment, Supplies and Prosthetic Devices  
 140.476 Medical Equipment, Supplies and Prosthetic Devices for Which Payment Will Not Be Made  
 140.477 Limitations on Equipment, Supplies and Prosthetic Devices  
 140.478 Prior Approval for Medical Equipment, Supplies and Prosthetic Devices

## DEPARTMENT OF PUBLIC AID

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

## NOTICE OF PROPOSED AMENDMENTS

140.479	Limitations, Medical Supplies	140.526	Quality Incentive Standards and Criteria for the Quality Incentive Program (QUIP) (Repealed)
140.480	Equipment Rental Limitations	140.527	Quality Incentive Survey (Repealed)
140.481	Payment for Medical Equipment, Supplies, Prosthetic Devices and Hearing Aids	140.528	Payment of Quality Incentive (Repealed)
140.482	Family Planning Services	140.529	Reviews (Repealed)
140.483	Limitations on Family Planning Services	140.530	Basis of Payment for Long Term Care Services
140.484	Payment for Family Planning Services	140.531	General Service Costs
140.485	Healthy Kids Program	140.532	Health Care Costs
140.486	Limitations on Medichex Services (Repealed)	140.533	General Administration Costs
140.487	Healthy Kids Program Timeliness Standards	140.534	Ownership Costs
140.488	Periodicity Schedule, Immunizations and Diagnostic Laboratory Procedures	140.535	Costs for Interest, Taxes and Rent
140.490	Medical Transportation	140.536	Organization and Pre-Operating Costs
140.491	Limitations on Medical Transportation	140.537	Payments to Related Organizations
140.492	Payment for Medical Transportation	140.538	Special Costs
140.493	Payment for Helicopter Transportation	140.539	Reimbursement for Basic Nursing Assistant, Developmental Disabilities Aide, Basic Child Care Aide and Habilitation Aide Training and Nursing Assistant Competency Evaluation
140.495	Psychological Services		Costs Associated With Nursing Home Care Reform Act and Implementing Regulations
140.496	Payment for Psychological Services	140.540	Salaries Paid to Owners or Related Parties
140.497	Hearing Aids	140.541	Cost Reports-Filing Requirements
		140.542	Time Standards for Filing Cost Reports
		140.543	Access to Cost Reports (Repealed)
		140.544	Penalty for Failure to File Cost Reports
		140.545	Update of Operating Costs
		140.551	General Service Costs
		140.552	Nursing and Program Costs
		140.553	General Administrative Costs
		140.554	Component Inflation Index
		140.555	Minimum Wage
		140.560	Components of the Base Rate Determination
		140.561	Support Costs Components
		140.562	Nursing Costs
		140.563	Capital Costs
		140.565	Kosher Kitchen Reimbursement
		140.566	Out-of-State Placement
		140.567	Level II Incentive Payments (Repealed)
		140.568	Duration of Incentive Payments (Repealed)
		140.569	Clients With Exceptional Care Needs
		140.570	Capital Rate Component Determination
		140.571	Capital Rate Calculation
		140.572	Total Capital Rate
		140.573	Other Capital Provisions
		140.574	Capital Rates for Rented Facilities
		140.575	Newly Constructed Facilities (Repealed)
		140.576	Renovations (Repealed)
		140.577	Capital Costs for Rented Facilities (Renumbered)
		140.578	Property Taxes

## SUBPART E: GROUP CARE

Section	
140.500	Long Term Care Services
140.502	Cessation of Payment at Federal Direction
140.503	Cessation of Payment for Improper Level of Care
140.504	Cessation of Payment Because of Termination of Facility
140.505	Informal Hearing Process for Denial of Payment for New ICF/MR Admissions
140.506	Provider Voluntary Withdrawal
140.507	Continuation of Provider Agreement
140.510	Determination of Need for Group Care
140.511	Long Term Care Services Covered by Department Payment
140.512	Utilization Control
140.513	Notification of Change in Resident Status <u>Utilization-Review--Plan</u>
	(Repealed)
140.514	Certifications and Recertifications of Care
140.515	Management of Recipient Funds--Personal Allowance Funds
140.516	Recipient Management of Funds
140.517	Correspondent Management of Funds
140.518	Facility Management of Funds
140.519	Use or Accumulation of Funds
140.520	Management of Recipient Funds--Local Office Responsibility
140.521	Room and Board Accounts
140.522	Reconciliation of Recipient Funds
140.523	Bed Reserves
140.524	Cessation of Payment Due to Loss of License
140.525	Quality Incentive Program (QUIP) Payment Levels



DEPARTMENT OF PUBLIC AID

DEPARTMENT OF PUBLIC AID

NOTICE OF PROPOSED AMENDMENTS

NOTICE OF PROPOSED AMENDMENTS

140.579 Specialized Living Centers  
 140.580 Mandated Capital Improvements (Repealed)  
 140.581 Qualifying as Mandated Capital Improvement (Repealed)  
 140.582 Cost Adjustments  
 140.583 Campus Facilities  
 140.584 Illinois Municipal Retirement Fund (IMRF)  
 140.590 Audit and Record Requirements  
 140.642 Screening Assessment for Nursing Facility and Alternative Residential Settings and Services  
 140.643 In-Home Care Program  
 140.645 Home and Community Based Services Waivers for Medically Fragile, Technology Dependent, Disabled Persons Under Age 21  
 140.646 Reimbursement for Developmental Training (DT) Services for Individuals with Developmental Disabilities Who Reside in Long Term Care (ICF AND SNF) and Residential (ICF/MR) Facilities  
 140.647 Description of Developmental Training (DT) Services  
 140.648 Determination of the Amount of Reimbursement for Developmental Training (DT) Programs  
 140.649 Effective Dates of Reimbursement for Developmental Training (DT) Programs  
 140.650 Certification of Developmental Training (DT) Programs  
 140.651 Decertification of Day Programs  
 140.652 Terms of Assurances and Contracts  
 140.680 Effective Date Of Payment Rate  
 140.700 Discharge of Long Term Care Residents  
 140.830 Appeals of Rate Determinations  
 140.835 Determination of Cap on Payments for Long Term Care (Repealed)

SUBPART F: MEDICAID PARTNERSHIP PROGRAM

Section  
 140.850 General Description (Repealed)  
 140.855 Definition of Terms (Repealed)  
 140.860 Covered Services (Repealed)  
 140.865 Sponsor Qualifications (Repealed)  
 140.870 Sponsor Responsibilities (Repealed)  
 140.875 Department Responsibilities (Repealed)  
 140.880 Provider Qualifications (Repealed)  
 140.885 Provider Responsibilities (Repealed)  
 140.890 Payment Methodology (Repealed)  
 140.895 Contract Monitoring (Repealed)  
 140.896 Reimbursement For Program Costs (Active Treatment) For Clients In Long Term Care Facilities For the Developmentally Disabled (Recodified)  
 140.900 Reimbursement For Nursing Costs For Geriatric Residents in Group Care Facilities (Recodified)  
 140.901 Functional Areas of Needs (Recodified)  
 140.902 Service Needs (Recodified)

140.903 Definitions (Recodified)  
 140.904 Times and Staff Levels (Repealed)  
 140.905 Statewide Rates (Repealed)  
 140.906 Reconsiderations (Recodified)  
 140.907 Midnight Census Report (Recodified)  
 140.908 Times and Staff Levels (Recodified)  
 140.909 Statewide Rates (Recodified)  
 140.910 Referrals (Recodified)  
 140.911 Basic Rehabilitation Aide Training Program (Recodified)  
 140.912 Interim Nursing Rates (Recodified)

SUBPART G: MATERNAL AND CHILD HEALTH PROGRAM

Section  
 140.920 General Description  
 140.922 Covered Services  
 140.924 Maternal and Child Health Provider Participation Requirements  
 140.926 Client Eligibility (Repealed)  
 140.928 Client Enrollment and Program Components (Repealed)  
 140.930 Reimbursement  
 140.932 Payment Authorization for Referrals (Repealed)

SUBPART H: ILLINOIS COMPETITIVE ACCESS AND REIMBURSEMENT EQUITY (ICARE) PROGRAM

Section  
 140.940 Illinois Competitive Access and Reimbursement Equity (ICARE) Program (Recodified)  
 140.942 Definition of Terms (Recodified)  
 140.944 Notification of Negotiations (Recodified)  
 140.946 Hospital Participation in ICARE Program Negotiations (Recodified)  
 140.948 Negotiation Procedures (Recodified)  
 140.950 Factors Considered in Awarding ICARE Contracts (Recodified)  
 140.952 Closing an ICARE Area (Recodified)  
 140.954 Administrative Review (Recodified)  
 140.956 Payments to Contracting Hospitals (Recodified)  
 140.958 Admitting and Clinical Privileges (Recodified)  
 140.960 Inpatient Hospital Care or Services by Non-Contracting Hospitals Eligible for Payment (Recodified)  
 140.962 Payment to Hospitals for Inpatient Services or Care not Provided under the ICARE Program (Recodified)  
 140.964 Contract Monitoring (Recodified)  
 140.966 Transfer of Recipients (Recodified)  
 140.968 Validity of Contracts (Recodified)  
 140.970 Termination of ICARE Contracts (Recodified)  
 140.972 Hospital Services Procurement Advisory Board (Recodified)

TABLE A  
 Medichex Recommended Screening Procedures (Repealed)

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

TABLE B	Geographic Areas
TABLE C	Capital Cost Areas
TABLE D	Schedule of Dental Procedures
TABLE E	Time Limits for Processing of Prior Approval Requests
TABLE F	Podiatry Service Schedule
TABLE G	Travel Distance Standards
TABLE H	Areas of Major Life Activity
TABLE I	Staff Time and Allocation for Training Programs (Recodified)
TABLE J	HSA Grouping (Repealed)
TABLE K	Services Qualifying for 10% Add-On (Repealed)
TABLE L	Services Qualifying for 10% Add-On to Surgical Incentive Add-On (Repealed)
TABLE M	Enhanced Rates for Maternal and Child Health Provider Services

**AUTHORITY:** Implemented and authorized by Articles III, IV, V, VI and Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Arts. III, IV, V, VI and 12-13].

**SOURCE:** Adopted at 3 Ill. Reg. 24, p. 166, effective June 10, 1979; rule repealed and new rule adopted at 6 Ill. Reg. 8374, effective July 6, 1982; emergency amendment at 6 Ill. Reg. 8508, effective July 6, 1982, for a maximum of 150 days; amended at 7 Ill. Reg. 681, effective December 30, 1982; amended at 7 Ill. Reg. 7956, effective July 1, 1983; amended at 7 Ill. Reg. 8308, effective July 1, 1983; amended at 7 Ill. Reg. 8271, effective July 5, 1983; emergency amendment at 7 Ill. Reg. 8354, effective July 5, 1983, for a maximum of 150 days; amended at 7 Ill. Reg. 8540, effective July 15, 1983; amended at 7 Ill. Reg. 9382, effective July 22, 1983; amended at 7 Ill. Reg. 12868, effective September 20, 1983; peremptory amendment at 7 Ill. Reg. 15047, effective October 31, 1983; amended at 7 Ill. Reg. 17358, effective December 21, 1983; amended at 8 Ill. Reg. 254, effective December 21, 1983; emergency amendment at 8 Ill. Reg. 580, effective January 1, 1984, for a maximum of 150 days; codified at 8 Ill. Reg. 2483; amended at 8 Ill. Reg. 3012, effective February 22, 1984; amended at 8 Ill. Reg. 5262, effective April 9, 1984; amended at 8 Ill. Reg. 6785, effective April 27, 1984; amended at 8 Ill. Reg. 6983, effective May 9, 1984; amended at 8 Ill. Reg. 7258, effective May 16, 1984; emergency amendment at 8 Ill. Reg. 7910, effective May 22, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7910, effective June 1, 1984; amended at 8 Ill. Reg. 10032, effective June 18, 1984; emergency amendment at 8 Ill. Reg. 10062, effective June 20, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 13343, effective July 17, 1984; amended at 8 Ill. Reg. 13779, effective July 24, 1984; Sections 140.72 and 140.73 recodified to 89 Ill. Adm. Code 141 at 8 Ill. Reg. 16354; amended (by adding sections being codified with no substantive change) at 8 Ill. Reg. 17899; peremptory amendment at 8 Ill. Reg. 18151, effective September 18, 1984; amended at 8 Ill. Reg. 21629, effective October 19, 1984; peremptory amendment at 8 Ill. Reg. 21677, effective October 24, 1984; amended at 8 Ill. Reg. 22097, effective October 24, 1984; peremptory amendment at 8 Ill. Reg. 22155, effective October 29, 1984; amended at 8 Ill. Reg. 23218, effective November 20, 1984; emergency amendment

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

at 8 Ill. Reg. 23721, effective November 21, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 25067, effective December 19, 1984; emergency amendment at 9 Ill. Reg. 407, effective January 1, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 2697, effective February 22, 1985; amended at 9 Ill. Reg. 6235, effective April 19, 1985; amended at 9 Ill. Reg. 8677, effective May 28, 1985; amended at 9 Ill. Reg. 9564, effective June 5, 1985; amended at 9 Ill. Reg. 10025, effective June 26, 1985; emergency amendment at 9 Ill. Reg. 11403, effective June 27, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 11357, effective June 28, 1985; amended at 9 Ill. Reg. 12000, effective July 24, 1985; amended at 9 Ill. Reg. 12306, effective August 5, 1985; amended at 9 Ill. Reg. 13998, effective September 3, 1985; amended at 9 Ill. Reg. 14684, effective September 13, 1985; amended at 9 Ill. Reg. 15503, effective October 4, 1985; amended at 9 Ill. Reg. 16312, effective October 11, 1985; amended at 9 Ill. Reg. 19138, effective December 2, 1985; amended at 9 Ill. Reg. 19737, effective December 9, 1985; amended at 10 Ill. Reg. 238, effective December 27, 1985; emergency amendment at 10 Ill. Reg. 798, effective January 1, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 672, effective January 6, 1986; amended at 10 Ill. Reg. 1206, effective January 13, 1986; amended at 10 Ill. Reg. 3041, effective January 24, 1986; amended at 10 Ill. Reg. 6981, effective April 16, 1986; amended at 10 Ill. Reg. 7825, effective April 30, 1986; amended at 10 Ill. Reg. 8128, effective May 7, 1986; emergency amendment at 10 Ill. Reg. 8912, effective May 13, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 11440, effective June 20, 1986; amended at 10 Ill. Reg. 14714, effective August 27, 1986; amended at 10 Ill. Reg. 15211, effective September 12, 1986; emergency amendment at 10 Ill. Reg. 16729, effective September 18, 1986, for a maximum of 150 days; amended at 10 Ill. Reg. 18808, effective October 24, 1986; amended at 10 Ill. Reg. 19742, effective November 12, 1986; amended at 10 Ill. Reg. 21784, effective December 15, 1986; amended at 11 Ill. Reg. 698, effective December 19, 1986; amended at 11 Ill. Reg. 1418, effective December 31, 1986; amended at 11 Ill. Reg. 2323, effective January 16, 1987; amended at 11 Ill. Reg. 4002, effective February 25, 1987; Section 140.71 recodified to 89 Ill. Adm. Code 141 at 11 Ill. Reg. 4302; amended at 11 Ill. Reg. 4303, effective March 6, 1987; amended at 11 Ill. Reg. 7664, effective April 15, 1987; emergency amendment at 11 Ill. Reg. 9342, effective April 20, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 9169, effective April 28, 1987; amended at 11 Ill. Reg. 10903, effective June 1, 1987; amended at 11 Ill. Reg. 11528, effective June 22, 1987; amended at 11 Ill. Reg. 12011, effective June 30, 1987; amended at 11 Ill. Reg. 12290, effective July 6, 1987; amended at 11 Ill. Reg. 14048, effective August 14, 1987; amended at 11 Ill. Reg. 14771, effective August 25, 1987; amended at 11 Ill. Reg. 16758, effective September 28, 1987; amended at 11 Ill. Reg. 17295, effective September 30, 1987; amended at 11 Ill. Reg. 18696, effective October 27, 1987; amended at 11 Ill. Reg. 20909, effective December 14, 1987; amended at 12 Ill. Reg. 916, effective January 1, 1988; emergency amendment at 12 Ill. Reg. 1960, effective January 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 5427, effective March 15, 1988; amended at 12 Ill. Reg. 6246, effective March 16, 1988; amended at 12 Ill. Reg. 6728, effective March 22, 1988; Sections 140.900 thru 140.912 and 140.912 and 140.912 Table I recodified



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

to 89 Ill. Adm. Code 147.5 thru 147.205 and 147-Table A and 147-Table B at 12 Ill. Reg. 6956; amended at 12 Ill. Reg. 6927, effective April 5, 1988; Sections 140.940 thru 140.972 recodified to 89 Ill. Adm. Code 149.5 thru 149.325 at 12 Ill. Reg. 7401; amended at 12 Ill. Reg. 7695, effective April 21, 1988; amended at 12 Ill. Reg. 10497, effective June 3, 1988; amended at 12 Ill. Reg. 10717, effective June 14, 1988; emergency amendment at 12 Ill. Reg. 11868, effective July 1, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 12509, effective July 15, 1988; amended at 12 Ill. Reg. 14271, effective August 29, 1988; emergency amendment at 12 Ill. Reg. 16921, effective September 28, 1988, for a maximum of 150 days; amended at 12 Ill. Reg. 16738, effective October 5, 1988; amended at 12 Ill. Reg. 17879, effective October 24, 1988; amended at 12 Ill. Reg. 18198, effective November 4, 1988; amended at 12 Ill. Reg. 19396, effective November 6, 1988; amended at 12 Ill. Reg. 19734, effective November 15, 1988; amended at 13 Ill. Reg. 125, effective January 1, 1989; amended at 13 Ill. Reg. 2475, effective February 14, 1989; amended at 13 Ill. Reg. 3069, effective February 28, 1989; amended at 13 Ill. Reg. 3351, effective March 6, 1989; amended at 13 Ill. Reg. 3917, effective March 17, 1989; amended at 13 Ill. Reg. 5115, effective April 3, 1989; amended at 13 Ill. Reg. 5718, effective April 10, 1989; amended at 13 Ill. Reg. 7025, effective April 24, 1989; Sections 140.850 thru 140.896 recodified to 89 Ill. Adm. Code 146.5 thru 146.225 at 13 Ill. Reg. 7040; amended at 13 Ill. Reg. 7786, effective May 20, 1989; Sections 140.94 thru 140.398 recodified to 89 Ill. Adm. Code 148.10 thru 148.390 at 13 Ill. Reg. 9572; emergency amendment at 13 Ill. Reg. 10977, effective July 1, 1989, for a maximum of 150 days; emergency expired November 28, 1989; amended at 13 Ill. Reg. 11516, effective July 3, 1989; amended at 13 Ill. Reg. 12119, effective July 7, 1989; Section 140.110 recodified to 89 Ill. Adm. Code 148.120 at 13 Ill. Reg. 12118; amended at 13 Ill. Reg. 12562, effective July 17, 1989; amended at 13 Ill. Reg. 14391, effective August 31, 1989; emergency amendment at 13 Ill. Reg. 15473, effective September 12, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 16992, effective October 16, 1989; amended at 14 Ill. Reg. 190, effective December 21, 1989; amended at 14 Ill. Reg. 2564, effective February 9, 1990; emergency amendment at 14 Ill. Reg. 3241, effective February 14, 1990, for a maximum of 150 days; emergency expired July 14, 1990; amended at 14 Ill. Reg. 4543, effective March 12, 1990; emergency amendment at 14 Ill. Reg. 4577, effective March 6, 1990, for a maximum of 150 days; emergency expired August 3, 1990; emergency amendment at 14 Ill. Reg. 5575, effective April 1, 1990, for a maximum of 150 days; emergency expired August 29, 1990; emergency amendment at 14 Ill. Reg. 5865, effective April 3, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 7141, effective April 27, 1990; emergency amendment at 14 Ill. Reg. 7249, effective April 27, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 10062, effective June 12, 1990; amended at 14 Ill. Reg. 10409, effective June 19, 1990; emergency amendment at 14 Ill. Reg. 12082, effective July 5, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 13262, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 14184, effective August 16, 1990, for a maximum of 150 days; emergency amendment at 14 Ill. Reg. 14570, effective August 22, 1990, for a maximum of 150 days; amended at 14 Ill. Reg. 14826, effective August 31, 1990; amended at 14 Ill. Reg. 15366, effective September

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

12, 1990; amended at 14 Ill. Reg. 15981, effective September 21, 1990; amended at 14 Ill. Reg. 17279, effective October 12, 1990; amended at 14 Ill. Reg. 18057, effective October 22, 1990; amended at 14 Ill. Reg. 18508, effective October 30, 1990; amended at 14 Ill. Reg. 18813, effective November 6, 1990; amended at 14 Ill. Reg. 20478, effective December 7, 1990; amended at 14 Ill. Reg. 20729, effective December 12, 1990; amended at 15 Ill. Reg. 298, effective December 28, 1990; emergency amendment at 15 Ill. Reg. 592, effective January 1, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 1051, effective January 18, 1991; Section 140.569 withdrawn at 15 Ill. Reg. 1174; amended at 15 Ill. Reg. 6220, effective April 18, 1991; amended at 15 Ill. Reg. 6534, effective April 30, 1991; amended at 15 Ill. Reg. 8264, effective May 23, 1991; amended at 15 Ill. Reg. 8972, effective June 17, 1991; amended at 15 Ill. Reg. 10114, effective June 21, 1991; amended at 15 Ill. Reg. 10468, effective July 1, 1991; amended at 15 Ill. Reg. 11176, effective August 1, 1991; emergency amendment at 15 Ill. Reg. 11515, effective July 25, 1991, for a maximum of 150 days; emergency expired December 22, 1991; emergency amendment at 15 Ill. Reg. 12919, effective August 15, 1991, for a maximum of 150 days; emergency expired January 12, 1992; emergency amendment at 15 Ill. Reg. 16366, effective October 22, 1991, for a maximum of 150 days; amended at 15 Ill. Reg. 17318, effective November 18, 1991; amended at 15 Ill. Reg. 17733, effective November 22, 1991; emergency amendment at 16 Ill. Reg. 300, effective December 20, 1991, for a maximum of 150 days; amended at 16 Ill. Reg. 174, effective December 24, 1991; amended at 16 Ill. Reg. 1877, effective January 24, 1992; amended at 16 Ill. Reg. 3552, effective February 28, 1992; amended at 16 Ill. Reg. 4006, effective March 6, 1992; amended at 16 Ill. Reg. 6408, effective March 20, 1992; amended at 16 Ill. Reg. 6849, effective April 7, 1992; amended at 16 Ill. Reg. 7017, effective April 17, 1992; amended at 16 Ill. Reg. 10059, effective June 5, 1992; amended at 16 Ill. Reg. 11174, effective June 26, 1992; expedited correction at 16 Ill. Reg. 11348, effective March 20, 1992; emergency amendment at 16 Ill. Reg. 11947, effective July 10, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 12186, effective July 24, 1992; emergency amendment at 16 Ill. Reg. 13337, effective August 14, 1992, for a maximum of 150 days; emergency amendment at 16 Ill. Reg. 15109, effective September 21, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 15561, effective September 30, 1992; amended at 16 Ill. Reg. 17302, effective November 2, 1992; emergency amendment at 16 Ill. Reg. 18097, effective November 17, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 19146, effective December 1, 1992; amended at 16 Ill. Reg. 19879, effective December 7, 1992; amended at 17 Ill. Reg. 837, effective January 11, 1993; amended at 17 Ill. Reg. 1112, effective January 15, 1993; amended at 17 Ill. Reg. 2290, effective February 15, 1993; amended at 17 Ill. Reg. 2951, effective February 17, 1993; amended at 17 Ill. Reg. 3421, effective February 19, 1993; amended at 17 Ill. Reg. 6196, effective April 5, 1993; amended at 17 Ill. Reg. 6839, effective April 21, 1993; amended at 17 Ill. Reg. 7004, effective May 17, 1993; expedited correction at 17 Ill. Reg. 7078, effective December 1, 1992; emergency amendment at 17 Ill. Reg. 11201, effective July 1, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 15162, effective September 2, 1993, for a maximum of 150 days; emergency amendment at 17 Ill. Reg. 18152, effective October 1, 1993, for a

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

maximum of 150 days; amended at 17 Ill. Reg. 18571, effective October 8, 1993; emergency amendment at 17 Ill. Reg. 18611, effective October 1, 1993, for a maximum of 150 days; emergency amendment suspended effective October 12, 1993; amended at 17 Ill. Reg. 20999, effective November 24, 1993; emergency amendment repealed at 17 Ill. Reg. 22583, effective December 20, 1993; amended at 18 Ill. Reg. 3620, effective February 28, 1994; amended at 18 Ill. Reg. 4250, effective March 4, 1994; amended at 18 Ill. Reg. 5951, effective April 1, 1994; emergency amendment at 18 Ill. Reg. 10922, effective July 1, 1994, for a maximum of 150 days; emergency amendment suspended, effective November 15, 1994; emergency amendment repealed at 19 Ill. Reg. 5839, effective April 4, 1995; amended at 18 Ill. Reg. 11244, effective July 1, 1994; amended at 18 Ill. Reg. 14126, effective August 29, 1994; amended at 18 Ill. Reg. 16675, effective November 1, 1994; amended at 18 Ill. Reg. 18059, effective December 19, 1994; amended at 19 Ill. Reg. 1082, effective January 20, 1995; amended at 19 Ill. Reg. 2933, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 3529, effective March 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 5663, effective April 1, 1995; amended at 19 Ill. Reg. 7919, effective June 5, 1995; emergency amendment at 19 Ill. Reg. 8455, effective June 9, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 9297, effective July 1, 1995, for a maximum of 150 days; emergency amendment at 19 Ill. Reg. 10252, effective July 1, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 13019, effective September 5, 1995; amended at 19 Ill. Reg. 14440, effective September 29, 1995; emergency amendment at 19 Ill. Reg. 14833, effective October 6, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 15441, effective October 26, 1995; amended at 19 Ill. Reg. 15692, effective November 6, 1995; amended at 19 Ill. Reg. 16677, effective November 28, 1995; amended at 20 Ill. Reg. 1210, effective December 29, 1995; amended at 20 Ill. Reg. 4345, effective March 4, 1996; amended at 20 Ill. Reg. 5858, effective April 5, 1996; amended at 20 Ill. Reg. 6929, effective May 6, 1996; amended at 20 Ill. Reg. 7922, effective May 31, 1996; amended at 20 Ill. Reg. 9081, effective June 28, 1996; emergency amendment at 20 Ill. Reg. 9312, effective July 1, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 11332, effective August 1, 1996; amended at 20 Ill. Reg. 14845, effective October 31, 1996; emergency amendment at 21 Ill. Reg. 705, effective December 31, 1996, for a maximum of 150 days; emergency amendment at 21 Ill. Reg. 3734, effective March 5, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 4777, effective April 2, 1997; amended at 21 Ill. Reg. 6899, effective May 23, 1997; amended at 21 Ill. Reg. 9763, effective July 15, 1997; amended at 21 Ill. Reg. 11569, effective August 1, 1997; emergency amendment at 21 Ill. Reg. 13857, effective October 1, 1997, for a maximum of 150 days; amended at 22 Ill. Reg. 1416, effective December 29, 1997; amended at 22 Ill. Reg. 4412, effective February 27, 1998; amended at 22 Ill. Reg. 7024, effective April 1, 1998; amended at 22 Ill. Reg. 10606, effective June 1, 1998; emergency amendment at 22 Ill. Reg. 13117, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16302, effective August 28, 1998; amended at 22 Ill. Reg. 18979, effective September 30, 1998; amended at 22 Ill. Reg. 19898, effective October 30, 1998; emergency amendment at 22 Ill. Reg. 22108, effective December 1, 1998, for a maximum of 150 days; emergency expired April 29, 1999; amended at 23 Ill. Reg. 5796, effective April 30, 1999; amended

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

at 23 Ill. Reg. 7122, effective June 1, 1999; emergency amendment at 23 Ill. Reg. 8236, effective July 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 9874, effective August 3, 1999; amended at 23 Ill. Reg. 12697, effective October 1, 1999; amended at 23 Ill. Reg. 13646, effective November 1, 1999; amended at 23 Ill. Reg. 14567, effective December 1, 1999; amended at 24 Ill. Reg. 661, effective January 3, 2000; amended at 24 Ill. Reg. 10277, effective July 1, 2000; emergency amendment at 24 Ill. Reg. 10436, effective July 1, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15086, effective October 1, 2000; amended at 24 Ill. Reg. 18320, effective December 1, 2000; emergency amendment at 24 Ill. Reg. 19344, effective December 15, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 3897, effective March 1, 2001; amended at 25 Ill. Reg. 6665, effective May 11, 2001; amended at 25 Ill. Reg. 8793, effective July 1, 2001; emergency amendment at 25 Ill. Reg. 8850, effective July 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART E: GROUP CARE

**Section 140.513 Notification of Change in Resident Status Utilization-Review Plan-(Repeated)**

- a) Except as provided in subsection (c) of this Section, in the event of a resident's death, a long term care facility shall notify the Department within five working days after the death by sending a telefax transmittal of the Department approved form to the designated Department of Human Services (DHS) contact. The facility shall maintain a copy of the Department approved form and the fax confirmation sheet as evidence of timely submission.
- b) Except as indicated in subsection (c), a facility shall send an original copy of the notification of death, discharge or any other changes in a resident's status, on the Department approved form, to the facility's designated DHS contact within five working days after the change.
- c) Facilities that participate in the Recipient Eligibility Verification (REV) System (see Section 140.55) shall electronically submit a notification to the Department of any change in a resident's status through their REV vendor within five working days after the change. Facilities with the highest incidences of overpayments shall be notified by the Department and required to participate in the REV System. Such facilities shall electronically submit a notification to the Department of any change in a resident's status through their REV vendor within five working days after the change. For any such facility, this requirement may be removed by the Department after one year of compliance by the facility.

(Source: Section Repealed at 16 Ill. Reg. 6849, effective April 7, 1992; new Section added at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Rights and Responsibilities
- 2) Code Citation: 89 Ill. Adm. Code 102
- 3) Section Numbers: 102.80  
Proposed Action: Amendment
- 4) Statutory Authority: Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-13]
- 5) Complete Description of the Subjects and Issues Involved: These amendments are being proposed in conjunction with companion amendments at 89 Ill. Adm. Code 120 pertaining to a medical assistance program for certain employed persons with disabilities in accordance with the federal Ticket to Work and Work Incentives Improvement Act and Public Act 91-0712. This new program, Health Benefits for Workers with Disabilities (HBWD), will allow persons with disabilities who return to work or whose earnings increase, and who would otherwise lose medical assistance, to pay premiums and thereby buy-in for coverage under the Department's medical assistance program. The income limit for participants in HBWD is set at 200 percent of the Federal Poverty Level.
- These proposed amendments to Section 102.80 add appeal provisions for participants in HBWD concerning the required premium amounts, as determined by the Department. The cost sharing charges (premiums) will be imposed, as allowed under federal law, on a sliding scale according to the gross unearned income and countable earned income of each participant. During any appeal, the premium amount determined by the Department will remain in effect.
- No budgetary changes are anticipated as a result of these proposed amendments.
- 6) Will these proposed amendments replace emergency amendments currently in effect? No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Do these proposed amendments contain incorporations by reference? No
- 9) Are there any other proposed amendments pending on this Part? Yes
- |                            |                                     |   |
|----------------------------|-------------------------------------|---|
| <u>Sections</u><br>102.230 | <u>Proposed Action</u><br>Amendment | <u>Illinois Register Citation</u><br>August 3, 2001 (25 Ill. Reg. 9830) |
|----------------------------|-------------------------------------|---|
- 10) Statement of Statewide Policy Objectives: These proposed amendments do not affect units of local government.

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

- 11) Time, Place, and Manner in Which Interested Persons May Comment on this Proposed Rulemaking: Any interested parties may submit comments, data, views, or arguments concerning this proposed rulemaking. All comments must be in writing and should be addressed to:

Joanne Jones  
Office of the General Counsel, Rules Section  
Illinois Department of Public Aid  
201 South Grand Avenue East, Third Floor  
Springfield, Illinois 62763-0002  
(217)524-0081

The Department requests the submission of written comments within 30 days after the publication of this notice. The Department will consider all written comments it receives during the first notice period as required by Section 5-40 of the Illinois Administrative Procedure Act [5 ILCS 100/5-40].

These proposed amendments may have an impact on small businesses, small municipalities, and not-for-profit corporations as defined in Sections 1-75, 1-80 and 1-85 of the Illinois Administrative Procedure Act [5 ILCS 100/1-75, 1-80, 1-85]. These entities may submit comments in writing to the Department at the above address in accordance with the regulatory flexibility provisions in Section 5-30 of the Illinois Administrative Procedure Act [5 ILCS 100/5-30]. These entities shall indicate their status as small businesses, small municipalities, or not-for-profit corporations as part of any written comments they submit to the Department.

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on Which this Rulemaking Was Summarized: July 2001

The full text of the proposed amendments begins on the next page:

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

TITLE 89: SOCIAL SERVICES  
CHAPTER I: DEPARTMENT OF PUBLIC AID  
SUBCHAPTER a: GENERAL PROVISIONS

## PART 102

## RIGHTS AND RESPONSIBILITIES

## Section

102.1	Incorporation By Reference
102.10	Rights of Clients
102.20	Nondiscrimination
102.21	Voter Registration
102.25	Grievance Rights of Clients
102.30	Confidentiality of Case Information
102.35	Case Records
102.40	Freedom of Choice
102.50	Reporting Change of Circumstances
102.60	Referral Requirements
102.63	Reporting Child Abuse/Neglect
102.66	Suitability of Home
102.70	Notice to Client
102.80	Right to Appeal
102.81	Continuation of Assistance Pending Appeal
102.82	Time Limit for Filing an Appeal
102.83	Examining Department Records
102.84	Child Care
102.90	Voluntary Repayment of Assistance
102.100	Excess Assistance (Recodified)
102.110	Recoupment of Overpayments (Recodified)
102.120	Correction of Underpayments
102.200	Recovery of Assistance
102.210	Estate Claims
102.220	Real Property Liens
102.230	Filing and Renewal of Liens
102.235	Liens on Property of Institutionalized Recipients
102.240	Foreclosure of Liens
102.250	Release of Liens
102.260	Personal Injury Claims
102.270	Convictions of Fraud - Eligibility
102.280	Single Conviction of Fraud - Administrative Review Board

**AUTHORITY:** Implementing Article XI and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/Art. XI and 12-13].

**SOURCE:** Filed and effective December 31, 1977; peremptory rule at 2 Ill. Reg. 52, p. 449, effective December 13, 1978; amended at 2 Ill. Reg. 52, p. 462, December 23, 1978; peremptory amendment at 3 Ill. Reg. 11, p. 39, effective

## DEPARTMENT OF PUBLIC AID

## NOTICE OF PROPOSED AMENDMENTS

March 1, 1979; amended at 3 Ill. Reg. 41, p. 167, effective October 1, 1979; amended at 3 Ill. Reg. 43, p. 196, effective October 15, 1979; amended at 5 Ill. Reg. 8035, effective July 27, 1981; amended at 5 Ill. Reg. 10775, effective October 1, 1981; amended at 6 Ill. Reg. 894, effective January 7, 1982; codified at 7 Ill. Reg. 5706; amended at 7 Ill. Reg. 8350, effective July 1, 1983; amended at 8 Ill. Reg. 18910, effective September 26, 1984; amended at 9 Ill. Reg. 327, effective December 31, 1984; amended at 9 Ill. Reg. 3730, effective March 13, 1985; amended at 9 Ill. Reg. 6812, effective April 26, 1985; amended at 9 Ill. Reg. 7162, effective May 1, 1985; amended at 9 Ill. Reg. 13091, effective August 16, 1985; amended at 9 Ill. Reg. 14704, effective September 13, 1985; amended at 9 Ill. Reg. 15912, effective October 4, 1985; amended at 10 Ill. Reg. 3981, effective February 22, 1986; amended at 10 Ill. Reg. 14795, effective August 29, 1986; amended at 10 Ill. Reg. 19088, effective October 24, 1986; Sections 102.100 and 102.110 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; amended at 11 Ill. Reg. 14067, effective August 10, 1987; amended at 11 Ill. Reg. 18239, effective October 30, 1987; amended at 12 Ill. Reg. 3735, effective February 5, 1988; amended at 13 Ill. Reg. 3940, effective March 10, 1989; amended at 14 Ill. Reg. 13279, effective August 6, 1990; emergency amendment at 14 Ill. Reg. 20078, effective December 3, 1990, for a maximum of 150 days; amended at 15 Ill. Reg. 7202, effective April 30, 1991; amended at 18 Ill. Reg. 273, effective December 28, 1993; amended at 18 Ill. Reg. 8938, effective June 3, 1994; amended at 19 Ill. Reg. 1108, effective January 26, 1995; emergency amendment at 19 Ill. Reg. 12320, effective August 14, 1995, for a maximum of 150 days; amended at 20 Ill. Reg. 883, effective December 29, 1995; amended at 21 Ill. Reg. 619, effective January 1, 1997; emergency amendment at 21 Ill. Reg. 4037, effective March 14, 1997, for a maximum of 150 days; amended at 21 Ill. Reg. 7438, effective June 1, 1997; amended at 21 Ill. Reg. 11955, effective August 13, 1997; amended at 24 Ill. Reg. 10294, effective July 1, 2000; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## Section 102.80 Right to Appeal

- a) Any individual who applies for or receives financial or medical assistance, social services or food stamps benefits shall have the right to appeal any of the following:
- 1) Refusal to accept an application or reapplication;
  - 2) Failure to act on an application within the mandated time period;
  - 3) A decision to deny an application;
  - 4) A decision to reduce, suspend, terminate or in any way change the amount of assistance/food stamps or manner in which it is provided;
  - 5) Failure to make a decision or take appropriate action on any request which the client makes;
  - 6) A decision affecting the basis of issuance of food stamps with which the client disagrees;



DEPARTMENT OF PUBLIC AID  
NOTICE OF PROPOSED AMENDMENTS

- 7) A decision to deny the payment for a medical service or item that requires prior approval;
- 8) A decision granting prior approval request for a lesser or different medical service or item than was originally requested;
- or
- 9) An issue of Department policy, if the client is aggrieved by its application; or
- 10) The determination of the amount of a premium that may be charged to a client under any medical assistance program. The Department's determination of the amount of a premium shall remain in force during the appeal process.
- b) The appeal may be filed by the client or the client's authorized representative. For food stamp clients, the request for a hearing may be made orally or in writing, and the appeal process is initiated effective with the date of the request.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF PUBLIC HEALTH  
NOTICE OF PROPOSED AMENDMENTS

- 1) Heading of the Part: Maternal Death Review
- 2) Code Citation: 77 Ill. Adm. Code 657
- 3) Section Numbers: Proposed Action:  
657.10 Amendment  
657.20 Amendment  
657.30 Amendment  
657.40 Amendment
- 4) Statutory Authority: Implementing and authorized by Part 21 of Article VIII of the Code of Civil Procedure [735 ILCS 5/Art. VIII, Part 21], the Illinois Health Statistics Act [410 ILCS 520], and the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois [20 ILCS 2310].
- 5) A Complete Description of the Subjects and Issues Involved: The rules describe the reporting requirements to the Department of Public Health of maternal deaths by health care providers. The amendments change the definition of "maternal death" to the death of a woman dying of any cause while pregnant or within one year (instead of 90 days) after the termination of the pregnancy.

6) Will this Amendment Replace an Emergency Amendment Currently in Effect?  
No

7) Does this Amendment Contain an Automatic Repeal Date? No

8) Does this Amendment Contain any Incorporations by Reference? No

9) Are there any Other Proposed Amendments Pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking may create or expand a State mandate on units of local government.

11) Time, Place, and Manner in which Interested Persons May Comment on this Rulemaking: Interested persons may present their comments concerning these rules by writing within 45 days after this issue of the *Illinois Register* to the following address:

Paul Thompson  
Division of Legal Services  
Illinois Department of Public Health  
535 West Jefferson, Fifth Floor  
Springfield, Illinois 62761-0001  
(217)782-2043, (e-mail: rules@idph.state.il.us)

These rules may have an impact on small businesses or municipalities or on

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

nonprofit entities. These entities commenting on these rules shall indicate their status, in writing, in their comments.

12) Initial Regulatory Flexibility Analysis:

A) Type of Small Businesses, Small Municipalities, and Not-For-Profit Corporations Affected: Hospitals, coroners, or other health care providers.

B) Reporting, Bookkeeping or Other Procedures Required for Compliance: The medical records and autopsy report pertinent to the maternal death must be provided to the Department within 30 days after receipt by the hospital, coroner, or health care provider of the Department's written request.

C) Types of Professional Skills Necessary for Compliance: Same as current reporting skills.

13) Date of regulatory agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: The rulemaking was not summarized on the two most recent regulatory agendas.

The full text of the Proposed Amendments begins on the next page:

## DEPARTMENT OF PUBLIC HEALTH

## NOTICE OF PROPOSED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER I: DEPARTMENT OF PUBLIC HEALTH  
SUBCHAPTER i: MATERNAL AND CHILD HEALTH

## PART 657

## MATERNAL DEATH REVIEW

## Section

657.10 Definition of Maternal Death  
657.20 Reporting of Maternal Death  
657.30 Time Limit on Reporting  
657.40 Confidentiality of Records

AUTHORITY: Implementing and authorized by Part 21 of Article VIII of the Code of Civil Procedure [735 ILCS 5/Art. VIII, Part 21], the Illinois Health Statistics Act [410 ILCS 520], and the Department of Public Health Powers and Duties Law of the Civil Administrative Code of Illinois [20 ILCS 2310].

SOURCE: Adopted and codified at 7 Ill. Reg. 287, effective December 22, 1982; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

**Section 657.10 Definition of Maternal Death**

Maternal Death is the death of any woman dying of any cause whatsoever while pregnant or within one year after 99-days-of the termination of the pregnancy, irrespective of the duration of the pregnancy at the time of the termination or the method by which it was terminated.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 657.20 Reporting of Maternal Death**

In the event of a maternal death and when requested in writing by the Illinois Department of Public Health, any hospital, any coroner or medical examiner, or any other health care provider, having contact with the deceased ~~and when requested-in-writing-by-the-Department-of-Public-Health~~, shall provide one complete copy of pertinent medical records, including the autopsy report, to the Illinois Department of Public-Health.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 657.30 Time Limit on Reporting**

The ~~All-such~~ medical records and autopsy report pertinent to the maternal death shall be provided to the Department within 30 days after of receipt, by the hospital, coroner, or health care provider, of the Department's a written



DEPARTMENT OF PUBLIC HEALTH

NOTICE OF PROPOSED AMENDMENTS

request from the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

Section 657.40 Confidentiality of Records

The Department of Public Health will keep all records confidential pursuant to federal law, Part 21 of Article VIII of the Code of Civil Procedure [735 ILCS 5/Art. VIII, Part 21], and Section 5 of the Illinois Health Statistics Act [410 ILCS 520/5].

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULES

1) Heading of the Part: Electricity Excise Tax Law

2) Code Citation: 86 Ill. Adm. Code 511

3) Section Numbers: Proposed Action:

511.100	New Section
511.110	New Section
511.120	New Section
511.130	New Section
511.140	New Section
511.150	New Section
511.160	New Section
511.200	New Section
511.210	New Section
511.220	New Section
511.230	New Section
511.300	New Section
511.310	New Section
511.320	New Section
511.330	New Section

4) Statutory Authority: 35 ILCS 640

5) A Complete Description of the Subjects and Issues Involved: Creates rules implementing the Electricity Excise Tax Law. Includes provisions for general administration of the tax and special provisions regarding the Retail Rate Law credit, Electronic Funds Transfer and delivering supplier and self-assessing purchaser registration.

6) Will this proposed rulemaking replace an emergency rulemaking currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Does this proposed rulemaking contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed rulemaking may submit them in writing by no later than 45 days after publication of this notice to:

Melanie A. Jarvis  
Associate Counsel

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

Illinois Department of Revenue  
 Legal Services Office  
 101 West Jefferson  
 Springfield, Illinois 62794  
 Phone: (217) 782-6996

## 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit corporations affected: Electric cooperatives and municipally-run electric utilities - these entities were taxed under preceding tax imposed by the Public Utilities Revenue Act - no additional requirements are imposed by the Electricity Excise Tax upon these entities.

B) Reporting, bookkeeping or other procedures required for compliance: Must keep books and records detailing electricity delivered and file monthly returns

C) Types of professional skills necessary for compliance: May require bookkeeping skills

## 13) Regulatory Agenda on which this rulemaking was summarized: July 2001

The full text of the Proposed Rule begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

TITLE 86: REVENUE  
 CHAPTER I: DEPARTMENT OF REVENUE

## PART 511

## ELECTRICITY EXCISE TAX LAW

## SUBPART A: GENERAL

Section  
 511.100 Definitions  
 511.110 Imposition of Tax  
 511.120 Electronic Fund Transfer and Estimated Payments  
 511.130 Transfer of Credit Memorandum  
 511.140 Public Utility Retail Rate Credit  
 511.150 Exclusions From Tax  
 511.160 Net or Single Metering

## SUBPART B: COLLECTION OF TAX BY DELIVERING SUPPLIERS

Section  
 511.200 Collection of Tax by Delivering Supplier  
 511.210 Delivering Supplier Registration  
 511.220 Revocation of Delivering Supplier Registration  
 511.230 Delivering Supplier Return

## SUBPART C: SELF-ASSESSING PURCHASERS

Section  
 511.300 Self-assessing Purchaser Election  
 511.310 Self-assessing Purchaser Registration and Renewal, \$200 Fee  
 511.320 Self-assessing Purchaser Revocation  
 511.330 Self-assessing Purchaser Return and Direct Payment

AUTHORITY: Implementing the Electricity Excise Tax Law [35 ILCS 640].

SOURCE: Adopted at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART A: GENERAL

## Section 511.100 Definitions

For the purposes of this Part:

"Delivering supplier" means any person engaged in the business of delivering electricity to persons for use or consumption and not for resale who, in any case where more than one person participates in the delivery of electricity to a specific purchaser, is the last of the



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

suppliers engaged in delivering the electricity prior to its receipt by the purchaser.

"Delivering supplier maintaining a place of business in this State", or any like term, means any delivering supplier having or maintaining within this State, directly or by a subsidiary, an office, generation facility, transmission facility, distribution facility, sales office or other place of business, or any employee, agent or other representative operating within this State under the authority of such delivering supplier or such delivering supplier's subsidiary, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such delivering supplier or such delivering supplier's subsidiary is licensed to do business in this State.

"Law" means the Electricity Excise Tax Law [35 ILCS 640].

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, or a receiver, trustee, guardian, or other representative appointed by order of any court, or any city, town, village, county, or other political subdivision of this State.

"Purchaser" means any person who acquires electricity for use or consumption and not for resale, for a valuable consideration.

"Self-assessing purchaser" means a purchaser for non-residential electric use who elects to register with and to pay tax directly to the Department in accordance with Sections 2-10 and 2-11 of the Electricity Excise Tax Law [35 ILCS 640/2-10 and 2-11].

"Use" means the exercise by any person of any right or power over electricity incident to the ownership of that electricity, except that it does not include the generation, production, transmission, distribution, delivery or sale of electricity in the regular course of business or the use of electricity for such purposes. [35 ILCS 640/2-3]

### Section 511.110 Imposition of Tax

The Electricity Excise Tax Law imposes a tax on the privilege of using in this State electricity purchased for use or consumption (see 35 ILCS 640/2-4). The base and rate of the tax is dependent upon the type of supplier from which the electricity is obtained.

- a) Electricity Purchased From Municipal Systems or Electric Cooperatives.  
A tax is imposed on the privilege of using in this State electricity purchased from a municipal system or electric cooperative, as defined

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

in Article XVII of the Public Utilities Act, which has not made an election as permitted by either Section 17-200 (election to provide existing or future customers access to alternative retail electric suppliers) or Section 17-300 (election to be an alternative retail electric supplier) of the Public Utilities Act, at the lesser of 0.32 cents per kilowatt hour of all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser or 5% of each such purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted, and delivered by such municipal system or electric cooperative to the purchaser, whichever is the lower rate as applied to each purchaser in each billing period. [35 ILCS 640/2-4(b)] Taxpayers who obtain their electricity or electric service from a supplier described in this Part may not elect to become a self-assessing purchaser as described in subsection (c) of this Section.

- b) Other Suppliers. Except as provided in subsection (a) of this Section, the tax is imposed on the privilege of using in this State electricity purchased for use or consumption and not for resale, other than by municipal corporations owning and operating a local transportation system for public service, at the following rates per kilowatt-hour delivered to the purchaser:

- 1) For the first 2000 kilowatt-hours used or consumed in a month: 0.330 cents per kilowatt-hour;
- 2) For the next 48,000 kilowatt-hours used or consumed in a month: 0.319 cents per kilowatt-hour;
- 3) For the next 50,000 kilowatt-hours used or consumed in a month: 0.303 cents per kilowatt-hour;
- 4) For the next 400,000 kilowatt-hours used or consumed in a month: 0.297 cents per kilowatt-hour;
- 5) For the next 500,000 kilowatt-hours used or consumed in a month: 0.286 cents per kilowatt-hour;
- 6) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.270 cents per kilowatt-hour;
- 7) For the next 2,000,000 kilowatt-hours used or consumed in a month: 0.254 cents per kilowatt-hour;
- 8) For the next 5,000,000 kilowatt-hours used or consumed in a month: 0.233 cents per kilowatt-hour;
- 9) For the next 10,000,000 kilowatt-hours used or consumed in a month: 0.207 cents per kilowatt-hour;
- 10) For all electricity in excess of 20,000,000 kilowatt-hours used or consumed in a month: 0.202 cents per kilowatt-hour. [35 ILCS 640/2-4(c)]

- c) In lieu of the foregoing rates in subsection (b) of this Section, the tax is imposed on a self-assessing purchaser at the rate of 5.1% of the self-assessing purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted and delivered to the self-assessing purchaser in a month. [35 ILCS 640/2-4(a)]

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

**Section 511.120 Electronic Fund Transfer and Estimated Payments**

## a) Estimated payments

- 1) Each taxpayer under the *Electricity Excise Tax Law* whose average monthly liability was \$10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability during such calendar year, shall make quarter monthly payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which the liability is incurred. The amount of the payments are the lower of either 22.5% of the taxpayer's actual tax liability for the month or 25% of the taxpayer's actual tax liability for the same calendar month of the preceding year. [35 ILCS 640/2-9 and 2-11]
- 2) No taxpayer under the *Electricity Excise Tax Law* is required to make estimated payments during calendar year 1998. For calendar year 1999, the Department will calculate the taxpayer's average monthly liability during calendar year 1998 by taking the sum of the liabilities for the last 5 months of calendar year 1998 and excluding the month of highest liability and the month of lowest liability during that period and dividing by 3.

## b) Electronic funds transfer

- 1) Each taxpayer under the *Electricity Excise Tax Law* whose average monthly liability was \$10,000 or more is also required to make all payments by electronic funds transfer. This calculation is made by taking the sum of the taxpayer's liabilities for the immediately preceding calendar year and dividing by 12. [35 ILCS 640/2-9 and 2-11]
- 2) No taxpayer under the *Electricity Excise Tax Law* is required to make payments by electronic funds transfer during calendar year 1998. For calendar year 1999, the Department will calculate the taxpayer's average monthly liability during calendar year 1998 by taking the sum of the liabilities for the last 5 months of calendar year 1998 and dividing by 12.

**Section 511.130 Transfer of Credit Memorandum**

- a) Any credit memorandum issued under the tax imposed by Section 2 of the *Public Utilities Revenue Act* may be applied against liability incurred under the *Electricity Excise Tax Law*.
- b) Any credit memorandum issued under the *Electricity Excise Tax Law* may be applied against any liability incurred under the tax imposed by Section 2 of the *Public Utilities Revenue Act*. [35 ILCS 640/2-12]

**Section 511.140 Public Utility Retail Rate Credit**

Public utilities that are required to purchase electricity from qualified solid waste energy facilities and incur liability as delivering suppliers are entitled to a credit against their *Electricity Excise Tax* liability in an

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

amount determined under Section 8-403.1(d) of the *Public Utilities Act*. (See 35 ILCS 640/2-7(b).)

**Section 511.150 Exclusions From Tax**

- a) Federal Government. *Electricity Excise Tax* is not imposed with respect to any transaction in interstate commerce, or otherwise, to the extent to which such transaction may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State. [35 ILCS 640/2-4(c)] For example, the federal government is not taxable under the *Electricity Excise Tax Law*. However, the State of Illinois and any other state or local government is subject to tax under the *Electricity Excise Tax Law*. Examples of the federal government include, but are not limited to, entities such as: the three main branches of government, the Executive, Legislative and Judicial, and the U.S. Postal Service. A sale of electricity to the federal courthouse would be exempt; however, a sale to a federal judge for his own use would not be exempt.
- b) Entities that are exempt from taxation by federal statute are not subject to *Electricity Excise Tax* liability. For example, federal credit unions are not subject to *Electricity Excise Tax* liability pursuant to 12 USC 1768. Further, Amtrak is not subject to *Electricity Excise Tax* liability pursuant to 49 USC 24301(l).
- c) Businesses Located in Enterprise Zones. *Electricity Excise Tax* is not imposed on business enterprises that are certified by the Department of Commerce and Community Affairs under Section 9-222.1 of the *Public Utilities Act* to the extent of such exemption and during the time specified by the Department of Commerce and Community Affairs. [35 ILCS 640/2-4(c)]
- d) Businesses Certified as High Impact Businesses. *Electricity Excise Tax* is not imposed on business enterprises that are certified by the Department of Commerce and Community Affairs as High Impact Businesses under Section 9-222.1A of the *Public Utilities Act* to the extent of such exemption and during the time specified by the Department of Commerce and Community Affairs. [35 ILCS 640/2-4(c)] In order to qualify for this exclusion from *Electricity Excise Tax* liability, the High Impact Business must be properly registered with the Department as a self-assessing purchaser under Section 2-10 of the *Electricity Excise Tax Law* (see Section 511.300 of this Part). [220 ILCS 5/9-222.1A]
- e) Delivering suppliers are required to maintain documentation in their books and records to support the exemptions described in this Section. In order to document the exemptions listed in subsections (c) and (d) of this Section, delivering suppliers must maintain the current certificate of eligibility issued by the Department of Commerce and Community Affairs to the businesses claiming the exemption.

**Section 511.160 Net or Single Metering**



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

Regardless of whether taxpayers who purchase electricity or electric service and also generate their own electricity, which is put back into their delivering suppliers' electricity distribution systems, use either Single Meters (Dual-Flow Meters) or Separate Meters (Single-Flow Meters), the basis of the tax is on the amount of electricity delivered for use. These types of meters are defined as follows:

- a) Single Meters (Dual-Flow Meters). These types of meters allow electricity to flow in both ways through the meter (electricity received by the taxpayer and electricity the taxpayer has put back into the delivering supplier's electricity distribution system) and the meter provides a reading only of the net result.
- b) Separate Meters (Single-Flow Meters). Separate or Single-Flow Meters are used to keep track of both the electricity received by the taxpayer from the delivering supplier and the amount returned by the taxpayer to the delivering supplier's electricity distribution system.

## SUBPART B: COLLECTION OF TAX BY DELIVERING SUPPLIERS

## Section 511.200 Collection of Tax by Delivering Supplier

Beginning with bills for electricity or electric service issued on and after August 1, 1998, the tax imposed by the Electricity Excise Tax Law shall be collected from the purchaser, other than a self-assessing purchaser where the delivering supplier or suppliers are notified by the Department that the purchaser has been registered as a self-assessing purchaser as described in Section 511.300 of this Part, by any delivering supplier maintaining a place of business in this State.

- a) All sales to a purchaser are presumed subject to tax collection unless the Department notifies the delivering supplier that the purchaser has been registered as a self-assessing purchaser for the accounts listed by the self-assessing purchaser as described in Section 511.300 of this Part. Upon receipt of notification by the Department, the delivering supplier is relieved of all liability for the collection and remittance of tax from the self-assessing purchaser for the accounts specifically listed by the self-assessing purchaser for which notification was provided by the Department. The delivering supplier is relieved of the liability for the collection of the tax from a self-assessing purchaser until such time as the delivering supplier is notified in writing by the Department that the purchaser's certification as a self-assessing purchaser is no longer in effect.
- b) Delivering suppliers shall collect the tax from purchasers by adding the tax to the amount of the purchase price received from the purchaser for delivering electricity for or to the purchaser. Where a delivering supplier does not collect the tax from a purchaser, other than a self-assessing purchaser, as provided in this Section, such purchaser shall pay the tax directly to the Department. [35 ILCS 640/2-7]

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

## Section 511.210 Delivering Supplier Registration

- a) Persons engaging in business in this State as delivering suppliers must register with the Department. Application for registration as a delivering supplier is made on Form RPU-3, Utility Tax Application for Registration.
- b) Any person who is denied registration as a delivering supplier may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of the Law and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given. [35 ILCS 640/2-7.5]

## Section 511.220 Revocation of Delivering Supplier Registration

The Department may, after notice and a hearing, revoke the certificate of registration of any person who violates any of the provisions of the Electricity Excise Tax Law. Before revocation of a certificate of registration, the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any such hearing held shall be conducted by the Director or by any officer or employee of the Department designated in writing by the Director. [35 ILCS 640/2-7.6]

## Section 511.230 Delivering Supplier Return

Return and payment of tax by delivering supplier.

- a) Each delivering supplier who is required or authorized to collect the tax imposed by the Law shall make a return to the Department on or before the 15th day of each month for the preceding calendar month stating the following:
  - 1) The delivering supplier's name and registration number.
  - 2) The address of the delivering supplier's principal place of business and the address of the principal place of business (if that is a different address) from which the delivering supplier engaged in the business of delivering electricity in this State.
  - 3) The total number of kilowatt-hours which the supplier delivered to or for purchasers during the preceding calendar month and upon the basis of which the tax is imposed.
  - 4) The amount of tax, computed on the number of kilowatt-hours in subsection (a)(3) at the rates stated in Section 511.110 of this Part.



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

- 5) *An adjustment for uncollectible amounts of tax in respect of prior period kilowatt-hour deliveries.*
  - 6) *The amount of credits to which the taxpayer is entitled on account of purchases made under Section 8-403.1 of the Public Utilities Act.*
  - 7) *The gross receipts from sales of electricity that are taxed on a gross receipts basis under Section 511.110(a) of this Part and any non-taxable deductions from those gross receipts.*
  - 8) *The amount of any credits to be applied to the liability period of the return in addition to those listed in subsection (a)(6).*
  - 9) *The signature of the taxpayer.*
  - b) *In preparing the return, the delivering supplier may use any reasonable method to derive reportable "kilowatt-hours" from the delivering supplier's records. For example, one such method is basing reportable kilowatt-hours on the amount of electricity billed to customers during the preceding calendar month.*
  - c) *The delivering supplier making the return provided for in this Section shall pay to the Department the amount of tax imposed by the Electricity Excise Tax Law at the time of making such return.* [35 ILCS 640/2-9]
- Such return shall be made on the Department's Form RPU-13, Electricity Excise Tax Return.

## SUBPART C: SELF-ASSESSING PURCHASERS

## Section 511.300 Self-assessing Purchaser Election

- a) *Any purchaser for non-residential electric use may elect to register with the Department as a self-assessing purchaser and to pay the tax imposed by the Electricity Excise Tax Law directly to the Department, at the rate of 5.1% of the self-assessing purchaser's purchase price for all electricity distributed, supplied, furnished, sold, transmitted and delivered to the self-assessing purchaser in a month, rather than paying the tax to such purchaser's delivering supplier.* [35 ILCS 640/2-10]
- b) *A purchaser may not elect to register to be a self-assessing purchaser for accounts where that purchaser's delivering supplier is a municipal system or electric cooperative, as defined in Article XVII of the Public Utilities Act, which has not made an election as permitted by either Section 17-200 (election to provide existing or future customers access to alternative retail electric suppliers) or Section 17-300 (election to be an alternative retail electric supplier) of the Act. See Section 511.110(c) of this Part.*
- c) *The election by a purchaser to register as a self-assessing purchaser may not be revoked by the purchaser for at least 2 years election.* [35 ILCS 640/2-10]

## Section 511.310 Self-assessing Purchaser Registration and Renewal, \$200 Fee

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

- a) *Application for a certificate of registration as a self-assessing purchaser shall be made to the Department upon Form RPU-3, Utility Tax Application for Registration, along with Form RPU-5, Self-assessing Purchaser Worksheet. Applicants must specify on Form RPU-3 the date upon which the applicant wishes to become a self-assessing purchaser. Applicants must provide the properly completed application (Form RPU-3 and RPU-5) to the Department at least 30 days before the date they wish to become a self-assessing purchaser in order to give the Department sufficient time to process the application and forward a copy of the RPU-5 to the delivering suppliers listed on that Form.*
- b) *Applicants must identify on Form RPU-5, Self-assessing Purchaser Worksheet, the delivering suppliers and each account with those delivering suppliers upon which the self-assessing purchaser has chosen to pay Electricity Excise Tax directly to the Department. The Department will then notify those delivering suppliers by sending a photocopy of the applicant's RPU-5 with a letter stating that the delivering supplier is no longer required to collect Electricity Excise Tax on those specified accounts. An applicant must complete separate RPU-5 Forms for each delivering supplier if the applicant does not wish all of the applicant's account information disclosed to each delivering supplier.*
- c) *Self-assessing purchasers who want to add additional delivering supplier accounts or delete specific accounts must complete a new RPU-5, Self-assessing Purchaser Worksheet, and submit it to the Department at the address listed on that Form at least 30 days before the date they wish to begin or cease self-assessing Electricity Excise Tax on those specified accounts. The Department will then notify those delivering suppliers by sending a photocopy of the applicant's revised RPU-5.*
- d) *Payment of Non-refundable Biennial Fee. Applicants are required to pay a non-refundable biennial fee of \$200 at the time of application for a certificate of registration as a self-assessing purchaser.*
- e) *Registration as a self-assessing purchaser is valid for a period of 2 years. A certificate of registration as a self-assessing purchaser will be renewed by the Department for an additional 2-year period upon application and payment of a non-refundable biennial fee of \$200. Application for renewal must be received at least 30 days prior to the expiration date of the registration in order to give the Department sufficient time to process the application and forward a copy of the RPU-5 to the delivering suppliers listed on that Form. If the Department does not receive the renewal application at least 30 days prior to the expiration date of the registration, the registration will be deemed revoked as provided in Section 511.320 of this Part. This process for issuing a 30-day notice is necessary in order to give the Department sufficient time to forward a copy of the notice of revocation to the applicable delivering suppliers so that the delivering suppliers can begin collecting tax on the date they are required.*

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

- f) The Department may deny a certificate of registration to any applicant if the owner, any partner, any manager or member of a limited liability company, or a corporate officer of the applicant, is or has been the owner, a partner, a manager or member of a limited liability company, or a corporate officer, of another self-assessing purchaser that is in default for moneys due under the Electricity Excise Tax Law. [35 ILCS 640/2-10]

**Section 511.320 Self-assessing Purchaser Revocation**

- a) The election by a purchaser to register as a self-assessing purchaser may not be revoked by the purchaser for at least 2 years after election.
- b) A self-assessing purchaser shall renew his or her registration every 2 years, or the registration shall be deemed to be revoked. If the Department does not receive the renewal application at least 30 days prior to the expiration date of the registration, the registration will be deemed revoked.
- c) A purchaser who revokes his or her registration as a self-assessing purchaser shall not thereafter be permitted to register as a self-assessing purchaser within the succeeding 2 years. [35 ILCS 640/2-10]
- d) The Department may, after notice and a hearing, revoke the certificate of registration of any self-assessing purchaser who violates any of the provisions of the Electricity Excise Tax Law. Before revocation of a certificate of registration, the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the charge against him or her, and on the date designated shall conduct a hearing upon this matter. The lapse of such 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary. Any such hearing held shall be conducted by the Director or by any officer or employee of the Department designated in writing by the Director. [35 ILCS 640/2-10.6]

**Section 511.330 Self-assessing Purchaser Return and Direct Payment**

- a) When electricity is used or consumed by a self-assessing purchaser subject to the tax imposed by the Law who did not pay the tax to a delivering supplier maintaining a place of business within this State and required or authorized to collect the tax, that self-assessing purchaser shall, on or before the 15th day of each month, make a return to the Department for the preceding calendar month, stating all of the following:
- 1) The self-assessing purchaser's name, principal address, and registration number.
  - 2) The aggregate purchase price paid by the self-assessing purchaser for the distribution, supply, furnishing, sale, transmission and

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED RULES

delivery of such electricity to or for the purchaser during the preceding calendar month, including budget plan and other purchaser-owned amounts applied during such month in payment of charges includible in the purchase price, and upon the basis of which the tax is imposed.

- 3) Amount of tax, computed upon the purchase price as outlined in subsection (a)(2) at the rate stated in Section 511.110(c) of this Part.
  - 4) The amount of any credits to be applied to the liability period of the return.
  - 5) The signature of the taxpayer. In making the return the self-assessing purchaser may use any reasonable method to derive reportable "purchase price" from the self-assessing purchaser's records.
- b) The self-assessing purchaser making the return provided for in this Section shall, at the time of making such return, pay to the Department the amount of tax imposed by the Electricity Excise Tax Law.
- c) Any self-assessing purchaser who ceases to be responsible for filing returns under the Electricity Excise Tax Law shall file a final return with the Department not more than one month thereafter. [35 ILCS 640/2-11]
- Such return shall be made on the Department's Form RPU-13, Electricity Excise Tax Return.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

- 1) Heading of the Part: Income Tax
- 2) Code Citation: 86 Ill. Adm. Code 100
- 3) Section Numbers: Proposed Action:  
100.2101 Amendment
- 4) Statutory Authority: 35 ILCS 5/201(e)(9)
- 5) A. Complete Description of the Subjects and Issues Involved: This rulemaking provides guidance for application of 35 ILCS 5/201(e)(9), as enacted in Public Act 91-913, allowing the replacement tax investment credit earned by a partnership or Subchapter S corporation to flow through automatically to any partner or shareholder who is subject to replacement tax.

- 6) Will this rulemaking replace any emergency rulemaking currently in effect?  
No
- 7) Does this rulemaking contain an automatic repeal date? No
- 8) Does this rulemaking contain incorporations by reference? No
- 9) Are there any other proposed rulemakings pending on this Part? No

- 10) Statement of Statewide Policy Objectives: This rulemaking does not create a State mandate, nor does it modify any existing State mandates.

- 11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to submit comments on this proposed amendment may submit them in writing by no later than 45 days after publication of this notice to:

Paul Caselton  
Deputy General Counsel - Income Tax  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
217/782-7055

- 12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: All partnerships and Subchapter S corporations who earn the replacement tax investment credit and have owners subject to replacement tax will benefit from this rulemaking.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

- B) Reporting, bookkeeping or other procedures required for compliance: No new procedures are required.
- C) Types of professional skills necessary for compliance: No new professional skills are necessary.

- 13) Regulatory Agenda on which this rulemaking was summarized: July 2001

The full text of the Proposed Amendment begins on the next page:



DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUE

PART 100  
INCOME TAX

SUBPART A: TAX IMPOSED

Section  
100.2000 Introduction  
100.2050 Net Income (IITA Section 202)

SUBPART B: CREDITS

Section  
100.2100 Replacement Tax Investment Credit Prior to January 1, 1994 (IITA 201(e))  
100.2101 Replacement Tax Investment Credit (IITA 201(e))  
100.2110 Investment Credit; Enterprise Zone (IITA 201(f))  
100.2120 Jobs Tax Credit; Enterprise Zone and Foreign Trade Zone or Sub-Zone (IITA 201(g))  
100.2130 Investment Credit; High Impact Business (IITA 201(h))  
100.2140 Credit Against Income Tax for Replacement Tax (IITA 201(i))  
100.2150 Training Expense Credit (IITA 201(j))  
100.2160 Research and Development Credit (IITA 201(k))  
100.2165 Education Expense Credit (IITA 201(m))  
100.2170 Tax Credits for Coal Research and Coal Utilization Equipment (IITA 206)  
100.2180 Credit for Residential Real Property Taxes (IITA 208)  
100.2195 Dependent Care Assistance Program Tax Credit (IITA 210)

SUBPART C: NET OPERATING LOSSES OF UNITARY BUSINESS GROUPS  
OCCURRING PRIOR TO DECEMBER 31, 1986

Section  
100.2200 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group (IITA Section 202) - Scope  
100.2210 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Definitions  
100.2220 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Current Net Operating Losses; Offsets Between Members  
100.2230 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Carrybacks and Carryforwards

DEPARTMENT OF REVENUE  
NOTICE OF PROPOSED AMENDMENT

100.2240 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Effect of Combined Net Operating Loss in Computing Illinois Base Income  
100.2250 Net Operating Losses Occurring Prior to December 31, 1986, of Unitary Business Groups: Treatment by Members of the Unitary Business Group: (IITA Section 202) - Deadline for Filing Claims Based on Net Operating Losses Carried Back From a Combined Apportionment Year

SUBPART D: ILLINOIS NET LOSS DEDUCTIONS OCCURRING ON OR AFTER  
DECEMBER 31, 1986

Section  
100.2300 Illinois Net Loss Deductions for Losses Occurring On or After December 31, 1986  
100.2310 Computation of the Illinois Net Loss Deduction  
100.2320 Determination of the Amount of Illinois Net Loss Carryovers  
100.2330 Illinois Net Loss Carrybacks and Net Loss Carryovers for Losses Occurring on or After December 31, 1986  
100.2340 Illinois Net Loss Deductions of Corporations That are Members of a Unitary Business Group: Separate Unitary Versus Combined Unitary Returns  
100.2350 Illinois Net Loss Deductions of Corporations that are Members of a Unitary Business Group: Changes in Membership

SUBPART E: ADDITIONS TO AND SUBTRACTIONS FROM TAXABLE INCOME OF INDIVIDUALS, CORPORATIONS, TRUSTS AND ESTATES AND PARTNERSHIPS

Section  
100.2470 Subtraction of Amounts Exempt from Taxation by Virtue of Illinois Law, the Illinois or U.S. Constitutions, or by Reason of U.S. Treaties or Statutes (IITA Sections 203(a)(2)(N), 203(b)(2)(J), 203(c)(2)(K) and 203(d)(2)(G))  
100.2480 Enterprise Zone Dividend Subtraction (IITA Sections 203(a)(2)(J), 203(b)(2)(K), 203(c)(2)(M) and 203(d)(2)(K))

SUBPART F: BASE INCOME OF INDIVIDUALS

Section  
100.2580 Medical Care Savings Accounts (IITA Sections 203(a)(2)(D-5), 203(a)(2)(S) and 203(a)(2)(T))  
100.2590 Taxation of Certain Employees of Railroads, Motor Carriers, Air Carriers and Water Carriers

SUBPART G: BASE INCOME OF TRUSTS AND ESTATES

Section

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

100.2680 Capital Gain Income of Estates and Trusts Paid to or Permanently Set Aside for Charity (Repealed)

SUBPART I: GENERAL RULES OF ALLOCATION AND APPORTIONMENT OF  
BASE INCOME

Section  
100.3000 Terms Used in Article 3 (IITA Section 301)  
100.3010 Business and Nonbusiness Income (IITA Section 301)  
100.3020 Resident (IITA Section 301)

SUBPART J: COMPENSATION PAID TO NONRESIDENTS

Section  
100.3100 Compensation (IITA Section 302)  
100.3110 State (IITA Section 302)  
100.3120 Allocation of Compensation Paid to Nonresidents (IITA Section 302)

SUBPART K: NON-BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section  
100.3200 Taxability in Other State (IITA Section 303)  
100.3210 Commercial Domicile (IITA Section 303)  
100.3220 Allocation of Certain Items of Nonbusiness Income by Persons Other than Residents (IITA Section 303)

SUBPART L: BUSINESS INCOME OF PERSONS OTHER THAN RESIDENTS

Section  
100.3300 Allocation and Apportionment of Base Income (IITA Section 304)  
100.3310 Business Income of Persons Other than Residents (IITA Section 304) - In General  
100.3320 Business Income of Persons Other Than Residents (IITA Section 304) - Apportionment (Repealed)  
100.3330 Business Income of Persons Other Than Residents (IITA Section 304) - Allocation  
100.3340 Business Income of Persons Other Than Residents (IITA Section 304)  
100.3350 Property Factor (IITA Section 304)  
100.3360 Payroll Factor (IITA Section 304)  
100.3370 Sales Factor (IITA Section 304)  
100.3380 Special Rules (IITA Section 304)  
100.3390 Petitions for Alternative Allocation or Apportionment (IITA Section 304(f))

SUBPART N: TIME AND PLACE FOR FILING RETURNS

Section  
100.5000 Time for Filing Returns: Individuals (IITA Section 505)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

100.5010 Place for Filing Returns: All Taxpayers (IITA Section 505)  
100.5020 Extensions of Time for Filing Returns: All Taxpayers (IITA Section 505)

100.5030 Taxpayer's Notification to the Department of Certain Federal Changes Arising in Federal Consolidated Return Years, and Arising in Certain Loss Carryback Years (IITA Section 506)  
100.5040 Innocent Spouses

SUBPART O: COMPOSITE RETURNS

Section  
100.5100 Composite Returns: Eligibility  
100.5110 Composite Returns: Responsibilities of Authorized Agent  
100.5120 Composite Returns: Individual Liability  
100.5130 Composite Returns: Required forms and computation of Income  
100.5140 Composite Returns: Estimated Payments  
100.5150 Composite Returns: Tax, Penalties and Interest  
100.5160 Composite Returns: Credit for Resident Individuals  
100.5170 Composite Returns: Definition of a "Lloyd's Plan of Operation"

SUBPART P: COMBINED RETURNS

Section  
100.5200 Filing of Combined Returns  
100.5201 Definitions and Miscellaneous Provisions Relating to Combined Returns  
100.5205 Election to File a Combined Return  
100.5210 Procedures for Elective and Mandatory Filing of Combined Returns  
100.5220 Designated Agent for the Members  
100.5230 Combined Estimated Tax Payments  
100.5240 Claims for Credit of Overpayments  
100.5250 Liability for Combined Tax, Penalty and Interest  
100.5260 Combined Amended Returns  
100.5265 Common Taxable Year  
100.5270 Computation of Combined Net Income and Tax  
100.5280 Combined Return Issues Related to Audits

SUBPART Q: REQUIREMENT AND AMOUNT OF WITHHOLDING

Section  
100.7000 Requirement of Withholding (IITA Section 701)  
100.7010 Compensation Paid in this State (IITA Section 701)  
100.7020 Transacting Business Within this State (IITA Section 701)  
100.7030 Payments to Residents (IITA Section 701)  
100.7040 Employer Registration (IITA Section 701)  
100.7050 Computation of Amount Withheld (IITA Section 701)  
100.7060 Additional Withholding (IITA Section 701)  
100.7070 Voluntary Withholding (IITA Section 701)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

100.7080 Correction of Underwithholding or Overwithholding (IITA Section 701)  
 100.7090 Reciprocal Agreement (IITA Section 701)  
 100.7095 Cross References

## SUBPART R: AMOUNT EXEMPT FROM WITHHOLDING

Section  
 100.7200 Withholding Exemption (IITA Section 702)  
 100.7110 Withholding Exemption Certificate (IITA Section 702)  
 100.7120 Exempt Withholding Under Reciprocal Agreements (IITA Section 702)

## SUBPART S: INFORMATION STATEMENT

Section  
 100.7200 Reports for Employee (IITA Section 703)  
 SUBPART T: EMPLOYER'S RETURN AND PAYMENT OF TAX WITHHELD

Section  
 100.7300 Returns of Income Withheld from Wages (IITA Section 704)  
 100.7310 Quarterly Returns Filed on an Annual Basis (IITA Section 704)  
 100.7320 Time for Filing Returns (IITA Section 704)  
 100.7330 Payment of Tax Deducted and Withheld (IITA Section 704)  
 100.7340 Correction of Underwithholding or Overwithholding (IITA Section 704)

## SUBPART U: COLLECTION AUTHORITY

Section  
 100.9000 General Income Tax Procedures (IITA Section 901)  
 100.9010 Collection Authority (IITA Section 901)  
 100.9020 Child Support Collection (IITA Section 901)

## SUBPART V: NOTICE AND DEMAND

Section  
 100.9100 Notice and Demand (IITA Section 902)

## SUBPART W: ASSESSMENT

Section  
 100.9200 Assessment (IITA Section 903)  
 100.9210 Waiver of Restrictions on Assessments (IITA Section 907)

## SUBPART X: DEFICIENCIES AND OVERPAYMENTS

Section  
 100.9300 Deficiencies and Overpayments (IITA Section 904)

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

100.9310 Application of Tax Payments Within Unitary Business Groups (IITA Section 603)  
 100.9320 Limitations on Notices of Deficiency (IITA Section 905)  
 100.9330 Further Notices of Deficiency Restricted (IITA Section 906)

## SUBPART Y: CREDITS AND REFUNDS

Section  
 100.9400 Credits and Refunds (IITA Section 909)  
 100.9410 Limitations on Claims for Refund (IITA Section 911)  
 100.9420 Recovery of Erroneous Refund (IITA Section 912)

## SUBPART Z: INVESTIGATIONS AND HEARINGS

Section  
 100.9500 Access to Books and Records (IITA Section 913)  
 100.9505 Access to Books and Records -- 60-Day Letters (IITA Section 913) (Repealed)  
 100.9510 Taxpayer Representation and Practice Requirements  
 100.9520 Conduct of Investigations and Hearings  
 100.9530 Books and Records

## SUBPART AA: JUDICIAL REVIEW

Section  
 100.9600 Administrative Review Law (IITA Section 1201)

## SUBPART BB: DEFINITIONS

Section  
 100.9700 Unitary Business Group Defined (IITA Section 1501)  
 100.9710 Financial Organizations (IITA Section 1501)  
 100.9720 Nexus

## SUBPART CC: LETTER RULING PROCEDURES

Section  
 100.9800 Letter Ruling Procedures

APPENDIX A Business Income Of Persons Other Than Residents  
 TABLE A Example of Unitary Business Apportionment  
 TABLE B Example of Unitary Business Apportionment for Groups Which Include Members Using Three-Factor and Single-Factor Formulas

AUTHORITY: Implementing the Illinois Income Tax Act [35 ILCS 5] and authorized by Section 1401 of the Illinois Income Tax Act [35 ILCS 5/1401].

SOURCE: Filed July 14, 1971, effective July 24, 1971; amended at 2 Ill. Reg.



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

49 p. 84, effective November 29, 1978; amended at 5 Ill. Reg. 813, effective January 7, 1981; amended at 5 Ill. Reg. 4617, effective April 14, 1981; amended at 5 Ill. Reg. 4624, effective April 14, 1981; amended at 5 Ill. Reg. 5537, effective May 7, 1981; amended at 5 Ill. Reg. 5705, effective May 20, 1981; amended at 5 Ill. Reg. 5883, effective May 20, 1981; amended at 5 Ill. Reg. 6843, effective June 16, 1981; amended at 5 Ill. Reg. 13244, effective November 13, 1981; amended at 5 Ill. Reg. 13724, effective November 30, 1981; amended at 5 Ill. Reg. 579, effective December 29, 1981; amended at 6 Ill. Reg. 9701, effective July 26, 1982; amended at 7 Ill. Reg. 399, effective December 28, 1982; amended at 8 Ill. Reg. 6184, effective April 24, 1984; codified at 8 Ill. Reg. 19574; amended at 9 Ill. Reg. 16986, effective October 21, 1985; amended at 9 Ill. Reg. 685, effective December 31, 1985; amended at 10 Ill. Reg. 7913, effective April 28, 1986; amended at 10 Ill. Reg. 19512, effective November 3, 1986; amended at 10 Ill. Reg. 21941, effective December 15, 1986; amended at 11 Ill. Reg. 831, effective December 24, 1986; amended at 11 Ill. Reg. 2450, effective January 20, 1987; amended at 11 Ill. Reg. 12410, effective July 8, 1987; amended at 11 Ill. Reg. 17782, effective October 16, 1987; amended at 12 Ill. Reg. 4865, effective February 25, 1988; amended at 12 Ill. Reg. 6748, effective March 25, 1988; amended at 12 Ill. Reg. 11766, effective July 1, 1988; amended at 12 Ill. Reg. 14307, effective August 29, 1988; amended at 13 Ill. Reg. 8917, effective May 30, 1989; amended at 13 Ill. Reg. 10952, effective June 26, 1989; amended at 14 Ill. Reg. 4558, effective March 8, 1990; amended at 14 Ill. Reg. 6810, effective April 19, 1990; amended at 14 Ill. Reg. 10082, effective June 7, 1990; amended at 14 Ill. Reg. 16012, effective September 17, 1990; emergency amendment at 17 Ill. Reg. 473, effective December 22, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 8869, effective June 2, 1993; amended at 17 Ill. Reg. 13776, effective August 9, 1993; recodified at 17 Ill. Reg. 14189; amended at 17 Ill. Reg. 19632, effective November 1, 1993; amended at 17 Ill. Reg. 19966, effective November 9, 1993; amended at 18 Ill. Reg. 1510, effective January 13, 1994; amended at 18 Ill. Reg. 2494, effective January 28, 1994; amended at 18 Ill. Reg. 7768, effective May 4, 1994; amended at 19 Ill. Reg. 1839, effective February 6, 1995; amended at 19 Ill. Reg. 5824, effective March 31, 1995; emergency amendment at 20 Ill. Reg. 1616, effective January 9, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 6981, effective May 7, 1996; amended at 20 Ill. Reg. 10706, effective July 29, 1996; amended at 20 Ill. Reg. 13365, effective September 27, 1996; amended at 20 Ill. Reg. 14617, effective October 29, 1996; amended at 21 Ill. Reg. 958, effective January 6, 1997; emergency amendment at 21 Ill. Reg. 2969, effective February 24, 1997, for a maximum of 150 days; emergency expired July 24, 1997; amended at 22 Ill. Reg. 2234, effective January 9, 1998; amended at 22 Ill. Reg. 19033, effective October 1, 1998; amended at 22 Ill. Reg. 21623, effective December 15, 1998; amended at 23 Ill. Reg. 3808, effective March 11, 1999; amended at 24 Ill. Reg. 10593, effective July 7, 2000; amended at 24 Ill. Reg. 12068, effective July 26, 2000; emergency amendment at 24 Ill. Reg. 17585, effective November 17, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 18731, effective December 11, 2000; amended at 25 Ill. Reg. 4640, effective March 15, 2001; amended at 25 Ill. Reg. 4929, effective March 15, 2001; amended at 25 Ill. Reg. 5374, effective April 2, 2001; amended at 25 Ill. Reg. 6687,

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

effective May 9, 2001; amended at 25 Ill. Reg. 7250, effective May 25, 2001; amended at 25 Ill. Reg. 8333, effective June 22, 2001; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

## SUBPART B: CREDITS

## Section 100.2101 Replacement Tax Investment Credit (IITA 201(e))

- a) A taxpayer shall be allowed a credit against the Personal Property Replacement Income Tax for investment in qualified property ("the investment credit"). The qualified property must be used in Illinois by a taxpayer who is primarily engaged in manufacturing, retailing, coal mining or fluorite mining.
- b) A taxpayer shall be allowed a credit equal to .5% of the basis of qualified property placed in service during the taxable year, provided such property is placed in service on or after July 1, 1984 and before January 1, 2004 (IITA Section 201(e)(1)).
- c) There shall be allowed an additional credit equal to .5% of the basis of qualified property placed in service during the taxable year, provided such property is placed in service on or after July 1, 1986, and the taxpayer's base employment in Illinois has increased by at least 1% over the preceding year. If, in any year, the increase in base employment within Illinois over the preceding year is less than 1%, the additional credit shall be limited to that percentage times a fraction, the numerator of which is .5% and denominator of which is 1%, but shall not exceed .5% (IITA Section 201(e)(1)).

1) Base employment. For purposes of calculating the additional investment credit, base employment in Illinois is defined as the average monthly total of individuals employed in Illinois by a taxpayer during the taxable year. To calculate base employment for a particular taxable year, the taxpayer need only total the number of individuals he employed in Illinois during each month of the taxable year as reported to the Illinois Department of Employment Security on line 1 of Form UC-3/40 or Form UI-3/40M and divide this total by the number of months in the taxable year.

2) Example of the Additional Investment Credit Computation. During the calendar year 1994, Corporation A reported 500 employees each month on Line 1 of Form UC-3/40. Therefore, Corporation A's base employment in Illinois for 1994 was 500 (500 x 12) divided by 12 = 500. In 1995, Corporation A reported 500 employees for each of the first six months, and 505 employees for each of the remaining six months of the taxable year. Therefore, Corporation A's base employment for 1995 was 502.5 ((500 x 6) + (505 x 6) divided by 12 = 502.5). Corporation A's percentage of increase in 1995 base employment over 1994 base employment is .5%. This figure is computed by

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

subtracting the 1994 base employment from the 1995 base employment and dividing the remainder by the 1994 base employment ((502.5 - 500) divided by 500 = .005 or .5%). Corporation A will be allowed an additional investment credit for 1995 of .25% (one-half of the percentage of increase) times the adjusted basis of qualified property placed in service in Illinois during the taxable year and on or after July 1, 1986.

- d) The investment credit is not allowed to the extent it would decrease the taxpayer's replacement tax liability for the taxable year to less than zero, nor may any credit for qualified property be allowed for any year other than the year in which the property was placed in service in Illinois. No carryback or carryforward of unused credit is allowed for tax years ending prior to December 31, 1985. For tax years ending after December 31, 1988, the credit shall be allowed for the tax year in which the property is placed in service, or, if the amount of the credit exceeds the tax liability for that year, whether it exceeds the original liability or the liability as later amended, such excess may be carried forward and applied to the tax liability of the 5 taxable years following the excess credit year. The credit shall be applied to the earliest year for which there is a liability. If there is credit from more than one tax year that is available to offset a liability, earlier credit shall be applied first.

- e) Qualified property. In order to qualify for the investment credit, property must be tangible; depreciable pursuant to Internal Revenue Code Section 167, except that "3-year property" as defined in IRC Section 168(c)(2)(A) is not eligible; and acquired by purchase as defined in Internal Revenue Code Section 179(d). IRC Section 168(c)(2)(A), as in effect at the time the credit was enacted, defined "3-year property" to mean "section 1245 property: with a present class life of 4 years or less; or used in connection with research and experimentation". In addition to the above requirements, property must be used in Illinois by the taxpayer who is engaged primarily in manufacturing, retailing, coal mining or fluorite mining, in order to qualify for the IITA Section 201(e) credit against the replacement tax. Qualified property can be new or used, but cannot have been previously used in Illinois, in such a manner and by such a person as would qualify for the investment credit, or for the Section 201(f) Enterprise Zone Investment Credit, and includes buildings and structural components thereof.

- 1) Tangible property, whether new or used, can consist of personality or realty and includes, but is not limited to, buildings and structural components of buildings, signs that are real property, machinery, equipment, and vehicles. Certain property, though tangible in nature, does not qualify as investment credit property because it is not depreciable.

- 2) Depreciable. In order to qualify for the investment credit,

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

property must also be depreciable pursuant to IRC Section 167. IRC Section 167 provides that depreciable property is property used in the taxpayer's trade or business or held for the production of income which is subject to wear and tear, exhaustion, or obsolescence.

- A) Property which is depreciated under the Modified Accelerated Cost Recovery System (MACRS), as provided by IRC Section 168, is considered depreciable pursuant to IRC Section 167 for purposes of the investment credit. Property assigned to a MACRS class of less than 4 years does not qualify for the investment credit.

- B) Examples of tangible property which is not depreciable are land, inventories or stock in trade, natural resources, and coin or currency.

- C) The provisions of Treasury Reg. Section 1.167(a)-4 shall govern in determining whether leasehold improvements are depreciable.

- D) IRC Section 179 allows taxpayers, under certain circumstances, to expense up to \$10,000 of equipment purchased in a single tax year. Based on this provision, if the total cost of the property was \$10,000 or less, the taxpayer has the option of expensing the cost all in one year as a depreciation expense. While the property does have a useful life of four or more years, since the election was made to completely expense the cost of the property in one year, the property has no federal depreciable basis and does not have a basis upon which to compute the Illinois investment tax credit. Property not fully expensed under Section 179 would qualify for the credit based on the cost of the depreciable property reduced by the Section 179 deduction.

- 3) Placed in service. For purposes of the Illinois investment credit, "placed in service" has the same meaning as under IRC Section 46. Property will be considered to have been placed in service in the same taxable year in which it is taken into account in determining the federal investment tax credit. See Treasury Reg. Section 1.46-3(d).

- A) Even though property is placed in service in the same taxable year in which it is taken into account in determining the Federal investment tax credit, only property placed in service in Illinois after June 30, 1984 and before January 1, 1997 can qualify for consideration in determining the credit against the replacement tax. Qualifying property shall be considered placed in service in Illinois on the date on which the property is placed in a condition or state of readiness and available for a specifically assigned function. See Treasury Reg.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

## Section 1.46-3(d)(2).

B) Property which is disposed of, moved out of Illinois or which ceases to qualify for any other reason during the same taxable year it was placed in service in Illinois will not be considered in computing the investment credit for the taxable year.

4) Adjusted basis. The basis of qualified property for purposes of the investment credit is the property's basis used to compute the depreciation deduction for federal income tax purposes.

A) In computing the amount of investment credit available for a taxable year, the proper investment credit rate will be applied to the total basis of all qualified property placed in service in Illinois during the taxable year, provided the property continues to qualify on the last day of the taxable year.

B) If the basis of property placed in service during a taxable year is increased or decreased during the same taxable year, the increased or decreased basis will be used to compute the investment credit for the taxable year.

5) Acquired by purchase. In order to qualify for the investment credit, the property must have been acquired by purchase as defined in IRC Section 179(d). For purposes of determining whether property is acquired by purchase as defined by IRC Section 179(d), the family of an individual includes only his spouse, ancestors and lineal descendants. Also, for these purposes only, a controlled group has the same meaning as in IRC Section 1563(a), except stock ownership of only 50% or more is required. See Treasury Reg. Section 1.179-4 under the Internal Revenue Code. Property which the taxpayer constructs, reconstructs or erects itself is generally considered acquired by purchase. IRC Section 179 defines purchase as any acquisition of property except:

- A) an acquisition from a person whose relationship to the acquiring person is such that a resulting loss would be disallowed under IRC Sections 267 or 707(b);
- B) an acquisition by one component member of a controlled group from another component member of the group; an acquisition of property, if the basis of the property in the hands of the person acquiring it is determined in whole or in part by its adjusted basis in the hands of the person from whom the property was acquired; or
- C) an acquisition of property, the basis of which is determined under IRC Section 1014(a). IRC Section 1014(a) covers property acquired from a decedent. Property acquired by bequest or demise is not acquired by purchase.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

6) Used in Illinois. Mobile property such as vehicles must be used predominantly in Illinois. Removal of such property from Illinois for a temporary and transitory purpose will not disqualify the property so long as it continues to be used predominantly in the Illinois operation of the taxpayer. For purposes of this Section, mobile property is considered to be predominantly used in Illinois if usage in Illinois exceeds usage outside of Illinois. Example: A retailer sometimes uses its trucks based in Illinois to deliver goods both in Illinois and to out-of-State buyers. Such temporary absence of its trucks from Illinois does not disqualify them.

7) A lessor of otherwise qualifying property, which property is used by the lessee in manufacturing, retailing, or coal or fluorite mining operations, would not qualify for the credit because the property is not used "by the taxpayer."

8) "Manufacturing" is defined in ITA Section 201(e)(3) as the material staging and production of tangible personal property by procedures commonly regarded as manufacturing, processing, fabrication or assembling which changes some existing material into new shapes, new qualities, or new combinations. It is not necessary that such procedures result in a finished consumer product. Procedures commonly regarded as manufacturing, processing, fabrication or assembling are those so regarded by the general public. If a taxpayer primarily engages in the following operations, the taxpayer will not qualify for the investment credit on the basis of engaging primarily in manufacturing. The activities described are generally not considered manufacturing operations:

- A) Agricultural activities such as cultivating the soil; raising or harvesting crops; the production of seed or seedlings; and the development of hybrid seeds, plants, or shoots are not manufacturing operations. The raising or breeding of livestock, poultry, fish or any other animals, as well as commercial fishing or beekeeping, is not manufacturing.
- B) Manufacturing operations do not include mining; quarrying; logging; drilling for oil, gas or water; or any other operations which result in the extraction or procurement of a natural resource. However, the refining or processing of such natural resources into a product of a different form or a product which has different qualities is manufacturing.
- C) Persons engaged in the construction, reconstruction, alteration, remodeling, or improvement of real estate are not considered engaged in manufacturing operations.
- D) Manufacturing operations do not include research and development of new products or production techniques.
- E) Manufacturing operations do not include the use of



## DEPARTMENT OF REVENUE

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

## NOTICE OF PROPOSED AMENDMENT

machinery or equipment in managerial or other non-production, non-operational activities including disposal of waste, scrap or residue, inventory control, production scheduling, work routing, purchasing, receiving, accounting, fiscal management, general communications, plant security, or personnel recruitment, selection or training.

- 9) Retailing. Retailing is defined as the sale of tangible personal property or services rendered in conjunction with the sale of tangible consumer goods or commodities (IITA Section 203(e)(3)). It is required that such tangible personal property be finished consumer goods, and the property be sold to its ultimate consumer. For example, sales of tangible personal property for resale are not included in the definition of retailing. The following activities are not considered retailing operations:

- A) The construction, reconstruction, alteration, remodeling, or improvement of real estate;
- B) The operation of a hotel or motel or other institution providing only lodging facilities;
- C) Other service professions which do not involve the transfer of tangible personal property other than as an incident to the service performed. For guidance in distinguishing service professions from retailing professions, the Department will rely on rules promulgated under the Service Occupation Tax Act at 86 Ill. Adm. Code 140;
- D) Farming operations related to crop and livestock production do not constitute retailing. However, the marketing of such products would constitute a retailing operation.

- 10) Mining of coal or fluorite. *Mining has the same meaning as in Section 613(c) of the Internal Revenue Code*, but shall be limited to the mining of coal and fluorite (IITA Section 203(e)(3)). Mining as defined in IRC Section 613(c) includes not only extraction, but also treatment processes such as cleaning, breaking, sorting, sizing, dust allaying, and loading for shipment.

- 11) New or used. Qualifying property can be new or used; however, used property does not qualify if it was previously used in Illinois in such a manner and by such a person as would qualify for the Illinois investment credit.

- A) Example: Corporation A purchases a used pick-up truck, for use in its manufacturing business in Illinois, from an Illinois resident who used the truck for personal purposes in Illinois. If the truck meets all the other requirements for the investment credit, it will not be disqualified merely because it was

previously used in Illinois for a purpose which did not qualify for the credit. However, had Corporation A purchased the used truck from an Illinois taxpayer in whose hands the truck qualified for the investment credit, the truck would not be qualified property to Corporation A, even though the party from whom the truck was acquired had never received an investment credit for it.

- B) Property which would otherwise qualify for the credit will not be disqualified because it was previously used in such a manner and by such a person as would have qualified for the investment credit before the time such credit came into effect. Example: In August of 1983, Corporation A purchased a drill press for use in its manufacturing operation in an Illinois Enterprise Zone from Corporation B. Corporation B originally placed the drill press into service in its Illinois manufacturing operation in January of 1980, before IITA Section 201(e) came into effect. Even though Corporation B would have qualified for the Illinois investment credit had there been a credit in 1980, this will not disqualify Corporation A from claiming a credit for this property, provided the property is otherwise qualified. However, should Corporation A sell the property to Corporation C for use in its Illinois manufacturing operation, the property would not qualify for the credit, even though it would otherwise qualify, because the property was used in such a manner and by such a person as would have qualified for the investment credit under Section 201(e) or 201(f) at a time when at least one of the credits was in effect. The fact that the Section 201(e) credit was not yet effective when Corporation A placed the property in service will not cause the property to qualify for the Section 201(e) credit in the hands of Corporation C because IITA Section 201(e) specifically provides that the property is disqualified if it previously qualified under either IITA Section 201(e) or 201(f).

- f) To qualify for the credit, property must be used in Illinois by a taxpayer who is primarily engaged in manufacturing, or in mining coal or fluorite, or in retailing. It is not required that the property be used exclusively in manufacturing, mining of coal or fluorite or in retailing. So long as the taxpayer is primarily, more than 50%, engaged in one of these operations, all qualified property is eligible for the credit, even if the property is not actually used in an exempt manufacturing, coal or fluorite mining or retailing process. The taxpayer must engage primarily in one or more of the operations. In other words, a taxpayer that is engaged 30% of the time in retailing and 40% of the time in manufacturing will qualify for the credit,

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

because the taxpayer is engaged primarily in one or more of the operations. In determining whether a taxpayer is primarily engaged in an activity the Department will look to the gross receipts of the taxpayer received in the ordinary course of business by that taxpayer. For example, if more than 50% of the taxpayer's gross receipts are from manufacturing, the taxpayer is primarily engaged in manufacturing, or if more than 50% of the gross receipts are from retailing, the taxpayer is primarily engaged in retailing. The taxpayer (and the Department) will look to the gross receipts received by the taxpayer in the ordinary course of business. Therefore, if, for example, the taxpayer suffers a casualty loss and that is compensated for by an insurance payment, the amount of money so received will not be deemed gross receipts in the ordinary course of business, and disqualify the taxpayer from eligibility and perhaps result in the recapture of credits granted in prior years.

EXAMPLE 1: Corporation A manufactures CD ROM units for personal computers, which are sold to others for resale. Corporation A also engages in the retail sale of canned computer software. Finally, Corporation A develops and sells custom computer software to various clients. Corporation A receives 20% of its gross receipts from the manufacturing of CD ROM units, 40% of its gross receipts from retail sales of canned software, and 40% of its gross receipts from its custom computer software development and sales operations. Corporation A is eligible for the credit. Corporation A is engaged primarily in manufacturing and retailing, because the total of its manufacturing and retailing operations is 80% of its gross receipts. Therefore, the Corporation is eligible for the credit.

EXAMPLE 2: Corporation B operates a hotel. 80% of the gross receipts of Corporation B are from the renting of rooms, 5% of the gross receipts are from the operation of a gift shop in the hotel and the remaining 15% of the gross receipts are from the operation of a restaurant and lounge in the hotel. The renting of rooms is not retailing. Therefore, Corporation B is ineligible for the credit because it is not engaged primarily in retailing, even though it does, through the operation of the gift shop, restaurant and lounge, engage in some retailing activities.

9) Recapture. If, within 48 months after being placed in service, any property ceases to be qualified property in the hands of the taxpayer or the situs of any qualified property is moved outside of Illinois, or outside of the enterprise zone, for other than a temporary or transitory purpose, then the personal property tax replacement income for the taxable year in which such event occurred will be increased (ITA Section 201(e)(7)). If, during the 48 month period, the taxpayer ceased to be primarily engaged in retailing, manufacturing, coal or fluoroite mining, the property ceases to be qualified property. Therefore, previously granted credits must be recaptured.

1) Any property disposed of by the taxpayer within 48 months after being placed in service ceases to qualify.

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

- 2) A taxpayer disposes of property when he sells the property, exchanges or trades in worn-out property for new property, abandons the property or retires it from use. Property destroyed by casualty, stolen, or transferred as a gift is treated as having been disposed of. Property which is mortgaged or used as security for a loan does not cease to qualify provided the taxpayer continues to use the property within Illinois. Property transferred to a trustee in bankruptcy is considered disposed of in the year the property is transferred to the trustee. A transfer of property by foreclosure is treated as a disposition. 3) The reduction of the basis of qualified property resulting from the redetermination of the purchase price is a disposition of qualified property to the extent of such reduction in the taxable year the reduction takes place. This occurs, for example, when property is purchased and placed in service in one year, and in a later year the taxpayer receives a refund of part of the original purchase price. See Regulation Section 1.47-2(c) under the Internal Revenue Code.

- 4) In order to determine the amount by which the personal property tax replacement income tax must be increased in the taxable year in which the property ceased to qualify or was moved outside of Illinois or the enterprise zone, the taxpayer must recompute the investment credit for the taxable year in which the property was placed in service by eliminating from his calculations any such property. This recomputed investment credit is subtracted from the amount of credit actually used in the year in which the disqualified property was placed in service. The difference between the recomputed credit and the credit actually used is added to the personal property tax replacement income tax or the income tax for the year in which the property ceased to qualify or was moved outside of Illinois. If the recomputed credit is greater than the credit actually used in the year the property was placed in service, no addition to the current taxable year's personal property tax replacement income tax or income tax is required.

EXAMPLE: In 1985, Corporation A places qualifying property with a basis of \$55,000 into service in an enterprise zone located in Illinois and computes a Section 201(e) investment credit for the year of \$275 ( $(\$55,000 \times .5\%)$ ) and a Section 201(h) investment credit of \$275 ( $(\$55,000 \times .5\%)$ ). Corporation A's 1985 personal property tax replacement income tax is \$260 and its income tax liability for the year is \$420. After application of the credit, Corporation A has no remaining replacement tax liability and its remaining income tax liability is \$145. In the following year Corporation A moved a qualifying asset having a basis in 1985 of \$5,000 from Illinois and is therefore required to recapture a portion of the investment credit applied against its replacement tax. In order to determine its additional income tax for 1986,



## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

Corporation A must recompute its 1985 investment credit by eliminating the disqualified property (\$55,000 - \$5,000 x .5% = \$250). This recomputed credit is subtracted from the investment credit actually used in 1985 against the income tax (\$260 - \$250 = \$10) and the difference is added to Corporation A's 1986 income tax after application of the 1986 investment credit.

#### h) Partnerships and Subchapter S Corporations.

1) For each taxable year ending before December 31, 2000, a partnership may elect to pass through to its partners the credits to which the partnership is entitled under IITA Section 201(e) for the taxable year. The election to pass through the credits shall be irrevocable. [IITA Section 201(e)(9)]

A) This subsection (h)(1) applies only to partnerships. Subchapter S corporations may not pass credits through to their stockholders under this provision.

B) Subject to the statute of limitations, the election under this subsection (h)(1) may be made retroactively. See Borden Chemicals and Plastics, L.P. v. Zehnder, 312 Ill.App.3d 35 (1st Dist. 2000). A retroactive election shall be made by filing an amended return by the partnership making the election for the tax year of the election and for any subsequent year affected by the election, and including a schedule of the credits to be passed through. An example of a subsequent year affected by an election would be a year in which a credit carried forward from a year prior to the election was used by the partnership or was passed through to the partners by an election for that subsequent year.

C) All credits to which the partnership is entitled under IITA Section 201(e) in the year an election is made are passed through to the partners, including credits passed through to the partnership from another partnership, credits carried forward from prior years and the share attributable to partners who are not subject to Personal Property Tax Replacement Income Tax and exempt organizations not subject to tax under IITA Section 205(a).

D) Any credit passed through to a partner must be used within the 5-year carryforward period allowed to the partnership. Thus, a credit earned by a partnership in the year the election is made may be used by the partner to whom it is passed in that partner's taxable year in which the taxable year of the partnership for which the election was made ends, and any unused amount may be carried forward to the 5 succeeding taxable years of the partner. If a partnership elects to pass through to its partners a credit earned in its immediately preceding taxable year, a partner may use that credit in its taxable year in which the taxable year of the partnership for which the election was made ends, and any unused amount may be carried forward to the 4 succeeding

## DEPARTMENT OF REVENUE

## NOTICE OF PROPOSED AMENDMENT

taxable years of the partner.

2) For taxable years ending on or after December 31, 2000, a partner that qualifies its partnership for a subtraction under Section 203(d)(2)(I) of IITA or a shareholder that qualifies a Subchapter S corporation for a subtraction under Section 203(b)(2)(S) shall be allowed a credit under IITA Section 201(e) equal to its share of the credit earned under IITA Section 201(e) during the taxable year by the partnership or Subchapter S corporation, determined in accordance with the determination of income and distributive share of income under Sections 702 and 704 and Subchapter S of the Internal Revenue Code. [35 ILCS 5/201(e)(9)] Under this subsection (h)(2):

A) The provision of this subsection (h)(2) apply to both partnerships and Subchapter S corporations.

B) Credits are passed through only in the year earned. Any amount carried forward from a prior year cannot flow through to the partners or shareholders of the entity.

C) The share of credits allocable to a partner or shareholder who is not subject to Personal Property Tax Replacement Income Tax and who is not exempt from taxation under IRC Section 501(a) do not pass through to that partner or shareholder. Such amounts may be used by the partnership or Subchapter S corporation against its Personal Property Tax Replacement Income Tax liability it incurs on the share of its income attributable to such partners or shareholders.

D) Any credit passed through to a partner or shareholder under this subsection (h)(2) may be used in the taxable year of the partner or shareholder in which the taxable year of the entity that passes the credit through ends, and may be carried forward to the 5 succeeding taxable years of the partner or shareholder until used.

E) Any credit passed through to a partnership or Subchapter S corporation under this subsection (h)(2) shall pass through to its partners or shareholders in the same manner as a credit earned by the partnership or Subchapter S corporation.

(Source: Amended at 21 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)



## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Certification and Training of Electronic Criminal Surveillance Officers

2) Code Citation: 20 Ill. Adm. Code 1295

3) Section Numbers:

	<u>Proposed Action:</u>
1295.20	Amendment
1295.30	Amendment
1295.40	Amendment
1295.50	Amendment
1295.60	Amendment
1295.70	Amendment
1295.80	Amendment

4) Statutory Authority: Implementing and authorized by Section 108B-14 of the Code of Criminal Procedure of 1963 [725 ILCS 5/108B-14] and authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15].

5) A Complete Description of the Subjects and Issues Involved: The proposed amendments will update the rulemaking to include technological advances in surveillance equipment.

6) Will these proposed amendments replace emergency amendments currently in effect? No

7) Does this rulemaking contain an automatic repeal date? No

8) Do these proposed amendments contain incorporations by reference? No

9) Are there any other proposed amendments pending on this Part? No

10) Statement of Statewide Policy Objectives: These rules will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

11) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Within 45 days after the publication of this Notice, any interested person may submit comments, data, views or argument regarding the proposed amendments. The submissions must be in writing and directed to:

Mr. James W. Redlich  
Chief Legal Counsel  
Illinois State Police  
124 East Adams Street, Room 102  
Post Office Box 19461  
Springfield, Illinois 62794-9461

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

Telephone: (217) 782-7658  
Fax: (217) 524-5743

12) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not for profit corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

13) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent regulatory agendas because: the agency had not anticipated we would be prepared to make the changes during this time period.

The full text of the Proposed Amendments begins on the next page:

DEPARTMENT OF STATE POLICE  
NOTICE OF PROPOSED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT  
CHAPTER II: DEPARTMENT OF STATE POLICE

PART 1295  
CERTIFICATION AND TRAINING OF  
ELECTRONIC CRIMINAL SURVEILLANCE OFFICERS

Section	Purpose
1295.10	Definitions
1295.20	Qualification, Certification, and Recertification of Officers
1295.30	Revocation of Certification
1295.40	Recording and Minimization Standards
1295.50	Documentation Requirements
1295.60	Evidence Handling Procedures
1295.70	Specifications for Materials and Equipment

AUTHORITY: Implementing and authorized by Section 108B-14 of the Code of Criminal Procedure of 1963 [725 ILCS 5/108B-14] and authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15].

SOURCE: Adopted at 13 Ill. Reg. 1856, effective January 26, 1989; amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

Section 1295.20 Definitions

- Unless specified otherwise, all terms shall have the meanings set forth in Article 108B of the Code of Criminal Procedure of 1963 [725 ILCS 5/108B]. "AN--AGP--relating-to-electronic-criminal-surveillance devices-and-amending-acts-herein-named"-(Public-Act-85-1989)-effective January-17-1989)-
- For purpose of this Part, the following additional definitions apply:

"Act" means Article 108B of the Code of Criminal Procedure of 1963 [725 ILCS 5/108B]. "AN-AGP-relating-to-electronic-criminal surveillance-devices-and-amending-certain-acts--herein-named"-(Public-Act-85-12037-effective-January-17-1989)-

"Call Content" means the oral (audio) communication received from a communications common carrier.

"Call Data" means the data received from a communications common carrier that includes, but is not limited to, signaling, call progress signals, dialed digits, and caller identification.

"Chief Executive Officer of a Law Enforcement Agency" means a chief of police, sheriff, director, superintendent, or other title that serves as the head of a law enforcement agency.

DEPARTMENT OF STATE POLICE  
NOTICE OF PROPOSED AMENDMENTS

"Department" means the Illinois Department of State Police.

"Dialed Number Recorder" means a device used to register telephone numbers, either dialed or pulse dialed.

"Director" means the Director of the Illinois Department of State Police.

"Electronic Criminal Surveillance Officer Certification" refers to registered credentials issued by the Department and the Illinois ~~Local-Governmental~~ Law Enforcement Officers Training Standards Board that--which identify those aspects of electronic criminal surveillance that the officer is authorized to perform.

"Electronic Criminal Surveillance Officers Training Course" means a course or series of courses of instruction provided by the Department, in cooperation with the Illinois ~~Local-Governmental~~ Law Enforcement Officers Training Standards Board, in the legal, practical, and technical aspects of the interception of private oral communications and related investigative and prosecutive techniques.

"Intercept Device" means the specialized equipment developed to interface with a communications common carrier's equipment in order to capture data, including, but not limited to, call data and call content.

"Minimization" refers to measures initiated to prevent the interception of privileged communications and to limit the interception of conversations which are innocent and lack evidentiary or investigative value.

"Recording Media" means a removable write-protectable element of an intercept device used to store data and audio information (e.g., CD-rom, cassette tape, etc.).

"Technical Service Unit" is a component of a law enforcement agency charged with the responsibility for providing support to investigative activities by operating electronic surveillance apparatus, including electronic criminal surveillance devices, alarms, communications apparatus, video equipment, photographic equipment, and night vision devices.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

No person shall engage in the interception of private oral communication as described in the Act, unless authorized to do so pursuant to certification provisions elaborated in this Part.

a) Qualifications - The qualifications of all candidates for certification as electronic criminal surveillance officers shall be specified in an application to the Director from the chief executive officer of the law enforcement agency which the candidate represents. Such application shall identify the specific level of training/certification which the candidate is authorized to receive and shall include a recommendation of the candidate by the chief executive officer. Other information to be supplied shall include:

- 1) The candidate's name, sex, date of birth, social security number, and agency identification number.
- 2) The candidate's business address and telephone numbers ~~number(s)~~.
- 3) Statement that the candidate is a full-time law enforcement officer.
- 4) A brief synopsis of the candidate's training and service record, including any specialized instruction in the techniques of electronic surveillance.
- 5) A brief statement reflecting the candidate's unit of assignment and present/proposed duties.
- 6) For training for certification as an Electronic Criminal Surveillance Officer III, a statement that the sponsoring agency maintains a Technical Surveillance Unit and that the candidate will be assigned to such Unit subsequent to his/her certification.

b) Certification - Three (3) levels of training in Electronic Criminal Surveillance shall be provided by the Department. The levels of training courses provided shall be designated as Electronic Criminal Surveillance Officer I (ECSO I), Electronic Criminal Surveillance Officer II (ECSO II), and Electronic Criminal Surveillance Officer III (ECSO III). Each of these training courses and training courses for recertification shall be certified by the Illinois ~~Local--Governmental~~ Law Enforcement Officers Training Standards Board in compliance with the administrative rules found at 20 Ill. Adm. Code 1720 and shall include training in the legal, practical, and technical aspects of the interception of private oral communications and related investigation and prosecution techniques. Upon successful completion of any one of these three-4 37 courses of training, an officer shall be certified by the Illinois State Police and the Illinois ~~Local--Governmental~~ Law Enforcement Officers Training Standards Board for the particular level of expertise and shall be authorized to perform tasks as herein described for the grade of certification:

- 1) Electronic Criminal Surveillance Officer I: An officer certified as an Electronic Criminal Surveillance Officer I (ECSO I) shall be permitted to prepare petitions for the authority to intercept private oral communications in accordance with the provisions of the Act; to intercept and supervise the interception of

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

conversations; to handle, safeguard, and utilize evidence derived from such conversations; and to operate and maintain equipment used to intercept such conversations. ECSO I certification, unless renewed by recertification, expires in ~~three-4 37~~ years.

- 2) Electronic Criminal Surveillance Officer II: An officer certified as an Electronic Criminal Surveillance Officer II (ECSO II) shall be authorized to install, maintain, repair, and remove electronic criminal surveillance devices designed or intended for use in intercepting private wire communications as defined by the Act. An ECSO II shall also have the full powers granted by ECSO I certification. ECSO II certification, unless renewed by recertification, expires in ~~4 three-4 37~~ years.

- 3) Electronic Criminal Surveillance Officer III: An officer certified as an Electronic Criminal Surveillance Officer III (ECSO III) can, when authorized by the Court, unobtrusively enter into any vehicle, structure, or property of another for the purpose of installing, maintaining, or removing electronic criminal surveillance devices. An ECSO III shall also have the full powers granted by ECSO II and ECSO I certification. ECSO III certification, unless renewed by recertification, expires in ~~2 years eighteen-4 37~~ months.

- 4) Certification as an ECSO II requires prior certification as an ECSO I. Certification as an ECSO III requires prior certification as an ECSO II.

- 5) Training for recertification of an ECSO II and ECSO III shall encompass all topics and information conveyed to subordinate levels.

- 6) Each law enforcement officer certified in accordance with this Part shall be issued registered credentials which identify the extent of each officer's authority.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1295.40 Revocation of Certification

The Director, with the concurrence of the Illinois ~~Local--Governmental~~ Law Enforcement Officers Training Standards Board, shall have the power to revoke or suspend any certification granted under this Part. The procedure to revoke or suspend certification shall be as follows:

- a) If the Director receives an allegation from any source that a certified Electronic Criminal Surveillance Officer is violating any law relating to electronic criminal surveillance or is violating any provision of this Part, the Director shall investigate the allegation. The Director shall notify the Illinois ~~Local--Governmental~~ Law Enforcement Officers Training Standards Board of all such investigations.

- b) At the conclusion of the investigation, the Director shall review the



## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

findings with the Illinois ~~Local-Governmental~~ Law Enforcement Officers Training Standards Board.

c) If the Director and the Illinois ~~Local-Governmental~~ Law Enforcement Officers Training Standards Board conclude that the officer has intentionally violated the law or has intentionally violated the civil rights of any party, the officer's certification shall be revoked and his/her credentials impounded and destroyed. An officer whose credentials have been revoked shall not be eligible for certification or recertification for a period of ~~five~~ 5 years.

d) If the Director and the Illinois ~~Local-Governmental~~ Law Enforcement Officers Training Standards Board conclude that the officer has violated any requirement of this Part, the officer's certification shall be suspended and impounded until the officer has successfully completed a recertification training course.

e) The Director shall notify, within ~~ten~~ 10 days of such decision, in writing the officer and the chief executive officer of the agency for which the officer is employed of any decision to revoke or suspend the officer's certification.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1295.50 Recording and Minimization Standards

Electronic Criminal Surveillance Officers shall comply with the minimization standards required by the Act and this Part:

a) Minimization requires that the intercepting officer must use his/her judgement and background knowledge of the criminal investigation and its participants, together with facts and circumstances that develop in the overheard conversations, to refrain from intercepting nonpertinent, innocent, or privileged conversations as they take place.

b) Judgements concerning minimization decisions shall be based on the knowledge possessed by the interception officer at the time of the decision. Examples of factors to be considered are as follows:

- 1) The nature and scope of the criminal activity being investigated.
- 2) The use of ambiguous, guarded, coded, or foreign language.
- 3) The location of the telephone or facility.
- 4) The expectation of the intercepted conversation containing statements relating to criminal conduct.

5) The likelihood of the interception containing privileged communications.

c) Officers authorized to supervise the interception of private oral communications shall, if possible, ascertain the identities and phone numbers of targeted conspirators, spouses, attorneys, clergymen, and physicians. Such available information shall be disseminated to all officers charged with responsibility for intercepting the referenced communications in order to assist in identifying potentially

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

privileged communications.

d) Minimization shall be a simultaneous process involving the cessation of audio interception, monitoring and recording, and the registering of such information ~~on the output-tape of the dated-number-recorder~~ ~~if such device is utilized~~. All such transactions shall be documented on the Intercept Log.

e) Spot monitoring of apparently privileged and nonpertinent conversations shall be permitted in order to ensure that such conversations do not lose their privileged and innocent character. This process shall be used to safeguard against instances where conspirators assume the identities of privileged parties to initiate nonpertinent conversations to mask criminal communications. All such spot monitoring shall be reflected on the Intercept Log.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1295.60 Documentation Requirements

The following documents shall be completed and maintained with respect to any interception of private oral communication authorized by the Act:

a) Monitor's Intercept Log shall be maintained. It shall include the monitor's names ~~name(s)~~; the date and shift; the intercept case number; the designation number of recording media ~~cassette-number~~; the name of the subject; the court order number; and for each call, identification of the call as outgoing or incoming and the caller and called parties; the start and finish time of the call; call tag data ~~the-tape-footage~~; whether the call was pertinent; whether any minimization was required; if any spot checks were made; a summary of the call; and the initials of the party making the entry.

b) Monitor's Post Log shall be maintained. It shall include the case number; the shift and date; the case investigator; and for each individual present at the monitor post, the person's name and agency; the time in and time out of the monitor post; the person's reason for being at the monitoring post; and an acknowledgment that the person is aware of all instructions from judges, prosecutors, and supervising officers concerning the execution of the court order authorizing the intercept.

c) ~~Investigative Report by each officer participating in the electronic surveillance shall be completed. It shall include the times and dates of the officer's surveillance, a list of the calls monitored by the officer, and the pertinent information derived, and the steps taken to secure and safeguard the evidentiary tapes generated.~~

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## Section 1295.70 Evidence Handling Procedures

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

The following procedures shall apply to the handling of evidence tapes generated pursuant to these provisions:

- a) Based on the operating specifications of the intercept equipment, all intercepted conversations will be recorded on the appropriate recording media for that device. A new cassette tape shall be placed in the recorder at the beginning of each shift, regardless of whether or not a conversation has been recorded by officers assigned to the previous shift.
- b) Each shift shall produce a copy of all recorded conversations on the applicable recording media. This copy will be write-protected before marking and sealing as evidence. This will be done whether or not conversations have been recorded by assigned personnel during the course of the shift. The recording tabs will immediately be broken off upon removing the cassette from the recorder. Such action must precede any other including the rewinding of cassettes.
- c) At the conclusion of the shift, a recording of all intercepted conversations, in company with any related documentation generated by the shift monitor, will be sealed in an envelope. Identifying information must be entered on the envelope and shall include, but is not limited to, the following: Each cassette shall be marked and placed within its own individual evidence envelope. Notations shall be entered on the exterior of referenced evidence envelope identifying its contents.
  - 1) Information identifying the specific investigation.
  - 2) A listing of the individual exhibits the envelope contains.
  - 3) The inclusive times and dates during which the referenced evidence exhibits were obtained.
  - 4) The identity of the interception officers.
- d) At the conclusion of the shift, all such evidence envelopes shall be placed within a larger evidence envelope in company with any related original register tape from the dated number recorder and the original intercept logs for the shift. Identifying information must then be entered on the envelope which contains the cassettes, logs and register tapes. Such information shall include, but is not limited to, the following:
  - 1) Information identifying the specific investigation.
  - 2) A listing of the individual exhibits which the envelope contains.
  - 3) The inclusive times and dates during which the referenced evidence exhibits were obtained.
  - 4) The identity of the interception officer(s).
- e) The envelope, containing the referenced documents and recording media cassettes, shall then be deposited in an evidence locker or other secure facility.
- ef) Officers shall retain copies of the referenced documents and recording media cassettes for investigative and disclosure purposes as authorized by law.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF STATE POLICE

## NOTICE OF PROPOSED AMENDMENTS

## Section 1295.80 Specifications for Materials and Equipment

- a) The materials and equipment used for electronic criminal surveillance shall be of a type and quality sufficient to satisfy the requirements of the Act and ensure adequate collection and preservation of evidence. The following standards outlined in subsection (b) shall be met or exceeded:
  - 1) Intercept device Bated-Number-Recorder equipment shall:
    - a) Operate in direct-connect, loop-extend or slave modes.
    - b) Include audio monitoring capabilities.
    - c) Include controls to facilitate minimization.
    - d) Provide printed documentation of all minimization incidents.
    - e) Include capacity to record onto original removable media.
    - f) Display call data.
    - g) Use virgin recording media and shall protect the recording from editing or other alterations.
    - h) Document minimization incidents.
    - i) Include real-time monitor for display and printer.
    - j) Include capacity to drive audio recorders.
    - k) Include battery backup sufficient to maintain operation in the event of power outage.
    - l) Include key pad controls to facilitate minimization.
    - m) Include controls to enable 1 button minimization action.
  - b) Audio recording equipment shall be 3 head audio cassette format with counter.
  - c) Audio recording tapes shall be virgin leaderless standard cassette format with one minimum thickness and shall only be used to record on one side of tape.
  - d) The make, model and serial numbers of all equipment used for electronic criminal surveillance under the provisions of the Act and this Part shall be registered by the Department.

(Source: Amended at 25 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Prequalification and Bidder Responsibility

2) Code Citation: 44 Ill. Adm. Code 950

3) Section Numbers: Adopted Action:

950.110	Amended
950.130	Amended
950.160	Amended
950.170	Amended
950.180	Amended
950.200	Amended
950.210	Amended
950.220	New
950.230	New
950.240	New
950.310	Amended
950.350	Amended
950.360	Amended
950.400	Amended
950.410	Amended
950.440	Amended

4) Statutory Authority: Implementing and authorized by Section 9.06 of the Capital Development Board Act [20 ILCS 3105/9.06] and Sections 5-25 and 30-20 of the Illinois Procurement Code [30 ILCS 500/5-25 and 30-20].

5) Effective date of Amendments: August 10, 2001

6) Do these amendments contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register. June 1, 2001; 25 Ill. Reg. 6773.

10) Has JCAR issued a Statement of Objections to these amendments? No

11) Differences between proposal and final version: Section 950.130 added the definitions of "A/E" and "Executive Director". Other changes made were not substantive and were limited to stylistic changes.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

13) Will these amendments replace any emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of Amendments: To clarify and update procedures for prequalifying contractors.

16) Information and questions regarding these adopted amendments shall be directed to:

Claire Gibson, Deputy Chief Counsel  
Capital Development Board  
3rd Floor, Wm. G. Stratton Bldg.  
Springfield, Illinois 62706  
217/782-1392

The full text of the adopted amendments begins on the next page:



## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 44: GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY MANAGEMENT

## SUBTITLE B: SUPPLEMENTAL PROCUREMENT

## CHAPTER XII: CAPITAL DEVELOPMENT BOARD

## PART 950

## PREQUALIFICATION AND BIDDER RESPONSIBILITY

## SUBPART A: BIDDER RESPONSIBILITY

950.110	Purpose
950.120	Policy
950.130	Definitions
950.140	Special Projects
950.150	Confidentiality
950.160	Sources for Determining Responsibility
950.170	Processing of Contractor Prequalification and Bidder Responsibility
950.180	and Renewal Applications
	Ineligibility

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF ABILITY TO BID, AND  
CONDITIONAL PREQUALIFICATION

950.200	Actions Affecting Prequalification
950.210	Causes for Suspension, Debarment, Modification of Ability to Bid, or Conditional Prequalification
950.220	Failure to Satisfactorily Perform Work on or Breach of the Terms of CDB Contracts, Private Contracts, or Other Governmental Contracts
950.230	Interim or Emergency Suspension or Modification Pursuant to Section 16 of the Capital Development Board Act
950.240	Denial of Prequalification

## SUBPART C: APPLICATION OF CDB ACTION

950.300	General
950.310	Violation of CDB Order
950.320	Nullification of Prequalification
950.330	Denial of Award of Contract
950.340	Debarment
950.350	Reapplication for Prequalification
950.360	Extension of CDB Action
950.370	Effect on Current Contracts
950.380	Basis of Decisions
950.390	Settlement

## SUBPART D: PROCEDURES

950.400	Review
950.410	Conference

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

950.420	Executive Director
950.430	Request for Reconsideration
950.440	Hearings <del>Final-Consideration</del>
950.450	Burden of Proof

AUTHORITY: Implementing and authorized by Section 9.06 of the Capital Development Board Act [20 ILCS 3105/9.06] and Sections 5-25 and 30-20 of the Illinois Procurement Code [30 ILCS 500/5-25 and 30-20].

SOURCE: Adopted at 2 Ill. Reg. 30, p. 140, effective July 27, 1978; amended at 4 Ill. Reg. 9, p. 233, effective February 14, 1980; amended at 5 Ill. Reg. 1890, effective February 17, 1981; amended and codified at 8 Ill. Reg. 20299, effective October 1, 1984; emergency amendment at 9 Ill. Reg. 3821, effective March 5, 1985, for a maximum of 150 days; amended at 9 Ill. Reg. 10659, effective July 3, 1985; amended at 9 Ill. Reg. 17321, effective October 29, 1985; amended at 12 Ill. Reg. 9860, effective May 27, 1988; amended at 16 Ill. Reg. 12424, effective July 28, 1992; Part repealed, new Part adopted at 19 Ill. Reg. 15607, effective November 2, 1995; amended at 20 Ill. Reg. 15222, effective November 15, 1996; amended at 22 Ill. Reg. 20007, effective November 9, 1998; amended at 25 Ill. Reg. 10741, effective August 14, 2001.

## SUBPART A: BIDDER RESPONSIBILITY

## Section 950.110 Purpose

The Capital Development Board (CDB) contracts shall be awarded only to responsible contractors. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors and suppliers. In the absence of information clearly indicating that the prospective contractor is responsible, CDB shall make a determination of non-responsibility. Only responsible contractors shall be prequalified, and only prequalified contractors shall be permitted to bid on CDB projects. A determination of nonresponsibility may be made at any time prior to or after award of a contract.

(Source: Amended at 25 Ill. Reg. 10741, effective August 14, 2001)

## Section 950.130 Definitions

The following definitions shall apply to this Part:

"A/E" means an individual or firm in the business of providing architectural, engineering or land surveying services as authorized by the State of Illinois Department of Professional Regulation (DPR). Licensed individuals shall be registered with DPR as sole proprietors. Firms and corporations shall be registered with DPR.

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

"CDB" means the Capital Development Board.

"Contract Requirements" consist of any and all provisions of the CDB contract, which include, but are not limited to the following:

The timely submittal of all post-award requirements.

Material compliance with all applicable statutory requirements, local, State and federal laws, environmental and regulatory requirements and CDB Rules and Resolutions.

Payment of prevailing wage rate as determined by the Illinois Department of Labor.

Adherence to alternative dispute resolution provisions.

Material compliance with all Minority and Female Business Enterprise Act requirements and workforce hiring goals.

Timely payment to subcontractors and suppliers, unless rightfully withheld and the contractor does not request payment from CDB.

Material compliance with project schedules.

Maintaining applicable licensing requirements.

"Contractor" or "Bidder" means a firm that is in the business of constructing some or all aspects of building projects.

"Executive Director" means the Director of the Capital Development Board.

"Key Person" means any individual who holds 5% or more ownership interest in the firm. In the event the firm is owned by another corporation, partnership, trust or business association, any individual within that firm or who is a trust beneficiary who holds a 5% or more ownership or beneficial interest is considered a "key person". Regardless of ownership interest, any officer, partner or director is considered a "key person". This definition also includes any individual who assumes the responsibility of an officer, owner, partner, director, etc., regardless of ownership interest.

"New Bidder" is one that has no history of performance with CDB or who has been inactive for more than 3 years. Work history is determined in accordance with Section 950.170. Bidders who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing non-responsible bidder will be declared non-responsible unless the new organization

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

can demonstrate it was not set up for the purpose of avoiding an earlier declaration of non-responsibility.

"Performance Record" consists of but is not limited to the following:

Evidence of material compliance with all CDB contract requirements as referenced.

Data indicating the contractor has maintained quality workmanship and has met all contract requirements on previous contracts, private and public.

"Responsibility" is a determination made by CDB that the contractor is a responsible contractor. The determination may be made at any time prior to or following award of a contract. Because responsibility is affected by such things as financial resources, performance records, and organizational and operational factors, all of which are subject to change, the initial determination of responsibility, made through evaluation of a new or renewal application to CDB, may be changed upon receipt of additional or different information. The contractor is required to inform CDB of any significant change to the information submitted in its application. Each prospective bidder must provide the CDB with adequate documentation of responsibility. The CDB will ordinarily provide forms for this information. The CDB may supplement this information from other sources and may require additional documentation at any time. For ease of administration, the basic information generally will be garnered through the contractor/bidder responsibility application in the case of new bidders. The responsibility determination will be reviewed periodically verified annually through a renewal application unless the contractor fails to demonstrate a satisfactory performance record with CDB, as evidenced by performance evaluations, in which case the contractor must complete a contractor/bidder responsibility application. CDB reserves the right to demand completion of a contractor/bidder responsibility application and supporting documents at any time. A responsibility determination will also be reviewed verified on an ongoing basis through other information, including but not limited to performance evaluations and reference contacts.

"Responsible Contractor" is a firm that:

Has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required bonds and insurance from sureties and insurance companies acceptable to CDB.

Is able to comply with the contract requirements, considering the firm's other business obligations.

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

Has a satisfactory performance record.

Has a satisfactory record of integrity and business ethics.

Has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them. This includes, but is not limited to, qualified supervisory personnel and a work force qualified to meet CDB contract work force requirements.

Has the necessary production, construction, and technical equipment and facilities, or the ability to obtain them.

Has a current DHR number or application pending.

Has provided all information required by the Financial Interests and Potential Conflicts of Interest Disclosure forms required by Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35].

Is otherwise qualified and eligible to receive a contract award under applicable laws and regulations.

"Responsive Bidder" means a person or firm who has submitted a bid that conforms in all material respects to the invitation for bids. Those who submit bids which are not in conformance with the requirements of the invitation for bids will be determined to be non-responsive, which factors include, but are not limited to:

Failure to be prequalified with CDB in advance of the bid opening date adequately-demonstrate-responsibility.

Submission of a bid late, in pencil, or in a manner that reveals the bid price prior to the bid opening (e.g., by facsimile).

Submission of a bid that is not in substantial conformance with the bidding documents.

Submission of bid security that is not in substantial compliance with the requirements of the bidding documents.

(Source: Amended at 25 Ill. Reg. 10741 effective 106-1-1-2001)

## Section 950.160 Sources for Determining Responsibility

To determine a contractor's responsibility, CDB may utilize information obtained from one or more of the following sources. In evaluating the

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

information, greater consideration shall be given to the contractor's most recent projects and projects with CDB.

a) Contractor bidder responsibility and renewal application forms

1) New bidders applications shall at a minimum require of the contractor:

A) Completed application form.

B) Evidence of bonding capacity meeting CDB criteria.

C) Adherence to statutory requirements.

D) Satisfactory work history - reference checks. References obtained provided may be verified and documented by the following methods:

i) Telephone reference checks.

ii) Reference questionnaire.

2) Renewal applications shall at a minimum require of the contractor:

A) The information set out in subsection (a)(1) ~~(a)~~ above.

B) Adherence to CDB rules and resolutions.

C) Satisfactory CDB work and performance history, which may be documented through evaluations Evaluations prepared on both current and past CDB projects by the following:

i) CDB staff.

ii) Architects/engineers and consultants.

iii) Using agencies.

iv) Other contractors, subcontractors and suppliers.

3) Application updates

The contractor shall have an affirmative duty to update significant information as it occurs, including but not limited to changes in ownership, change of name, change of address, change in minority/female owned firm status, loss of SOS "good standing" status, suspension or debarment by another governmental agency decrease by more than 25% in bonding capacity, filing of bankruptcy, contract terminations, and filing of formal criminal charges against the firm or its officers, owners, or employees. Failure to disclose as required may lead to action on prequalification. (See Section 950.210(c).)

b) Other government entities  
CDB may conduct history reference checks by contacting federal, State or local governmental entities.

c) Other sources

CDB may conduct reference checks or gather relevant information from any other source in order to determine responsibility. Acceptable sources which may include, but are not limited to:

1) Surety/bonding companies

2) Financial institutions

3) Periodicals

4) Newspapers

5) Court records

6) Dun and Bradstreet reports

7) Audited financial statements



## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 86) Any type of public record
- d) Previous employment history  
For any newly organized firm or a firm with a limited work history, CDB may conduct individual performance reference checks on any or all personnel.
- e) Additional information  
CDB may request additional information from the contractor at any time.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/15/2003)

**Section 950.170 Processing of Contractor Prequalification and Bidder Responsibility and Renewal Applications**

- a) New bidders and bidders nearing the prequalification expiration date must complete a contractor prequalification and bidder responsibility application, including the Financial Interests and Potential Conflicts of Interest forms required under Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35]. ~~Unless the applicant is a new bidder or fails to demonstrate a satisfactory performance record with CDB as evidenced by performance evaluations, the responsibility determination will be verified by a renewal application.~~
- b) Processing of contractor prequalification and bidder responsibility applications by CDB may require up to 45 days when the application information is complete and satisfactory and references are responsive.

- c) Applications for renewal will be sent to contractors approximately 60 days before the expiration of current prequalification and are available electronically on CDB's internet site at [www.cdb.state.il.us](http://www.cdb.state.il.us). Contractors who do not receive an application are responsible for obtaining one at least 45 days ~~contacting EBB~~ prior to expiration ~~to request an application~~. When all information received is complete and satisfactory, processing may take up to 45 days. When any information is incomplete or unsatisfactory, a longer processing time will be required. Contractors will be notified when information is incomplete or unsatisfactory. ~~Such applications may require up to 45 days for processing depending upon disclosure of changes of information from the last application whose applications nearing the end of the 45-day processing time will be notified accordingly.~~ Unless otherwise specified in writing by CDB, the term of prequalification shall be one year. When prequalification is granted, the contractor will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by agreement with the contractor, when a determination is made that a shorter period is justified. CDB may, in its discretion, grant a longer period of prequalification when deemed appropriate in light of recent and relevant satisfactory

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

project performance. Updated or new contractor information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting contractors by trade to produce lists of contractors in various trades. At the beginning of each month, a list of contractors whose prequalification expires in approximately 60 days will be generated.

- d) Applications may be sent to CDB by facsimile, provided that the ~~original application is received by CDB within five business days. Applications sent by facsimile may require up to 45 days for processing.~~

- e) CDB shall review and evaluate each application received, which may include one or more of the following actions:

- 1) Reviewing to determine whether the application is filled out in accordance with the instructions provided.
- 2) Contacting work references or any other possible sources of pertinent information.
- 3) Requesting additional information from the applicant.
- 4) Reviewing CDB contractor performance evaluations.
- 5) Meeting with the applicant at the request of CDB or the applicant.

- f) CDB shall deny prequalification to any firm that has not affirmatively demonstrated its responsibility. CDB's determination of responsibility shall be final.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/15/2003)

**Section 950.180 Ineligibility**

A contractor, whether or not previously or currently prequalified and determined to be responsible by CDB, may be ineligible to bid under the following circumstances:

- a) The contractor fails to meet statutory or regulatory requirements other than those set out in this part.
- b) The contractor has inadequate relevant experience in construction contracting to undertake CDB projects or a particular CDB project. In determining whether a contractor has adequate relevant experience, CDB will consider the size, type, number, and recency of past private and public contracts of the firm, its predecessors, or key persons with the firm.
- c) The contractor has inadequate resources to meet the CDB contractual work force requirements. CDB shall not make a determination of responsibility for any contractor who has the appearance of being a broker, rather than a conventional construction business. In determining whether a contractor is a broker or a firm with inadequate resources, CDB may consider one or more of the following:
  - 1) Whether the contractor maintains and works from a separate conventional office which is not a residence or offices for other

DEPARTMENT OF CAPITAL DEVELOPMENT BOARD  
NOTICE OF ADOPTED AMENDMENTS

- may enter into, considering both public and private contracts.
- 4) Imposing limits as set forth above pending performance on the contractor's next CDB contract(s), in instances where the contractor has no current CDB contracts.
- 5) Conditional Prequalification  
CDB may condition prequalification (which may be otherwise limited) on the contractor's successful utilization of a management plan, evaluations, conferences, or other methods designed to achieve satisfactory performance or compliance with contract requirements.
- e) Suspension  
CDB may suspend a contract or disqualify a contractor temporarily from contracting with CDB, for a period of time up to five years. The contractor's failure to timely pursue administrative action as provided by Subpart D of this Part shall constitute consent of the contractor to CDB's action.

(Source: Amended at 25 Ill. Reg. 10741 effective April 2005)

Section 950.210 Causes for Suspension, Debarment, Modification of Ability to Bid, or Conditional Prequalification

CDB may determine a contractor is not responsible and suspend, debar or otherwise modify or issue a conditional prequalification based upon one or more of the following:

- a) Failure to satisfactorily perform work on CDB contract(s), private contract(s), or other governmental contracts. [See also Section 950.220.]
- b) Breach of the terms of a CDB contract(s), private contract(s), or other governmental contract(s). (See also Section 950.220.)
- c) Making false or misleading statements, or failing to disclose or update significant information in connection with CDB procedures or documents, including but not limited to the contractor bidder responsibility application or renewal application.
- d) Violation of civil or criminal federal or State statutes or administrative rules and regulations. In the case of criminal violations, indictment or filing of formal charges by information (complaint) shall constitute adequate evidence for a determination of non-responsibility.
- e) Financial instability which may be evidenced by bankruptcy, failure to timely pay subcontractors, difficulty in obtaining acceptable bonding, attempts to assign contract proceeds, or other indications of serious business management deficiencies.
- f) Failure to understand, accept or utilize CDB procedures and standards, or abuse of CDB procedures and standards which results in the extraordinary expenditure of CDB resources.
- g) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen

DEPARTMENT OF CAPITAL DEVELOPMENT BOARD  
NOTICE OF ADOPTED AMENDMENTS

- businesses.
- 2) Whether the contractor maintains a full-time office and construction staff consisting of clerical, managerial, and supervisory personnel.
- 3) Whether key persons with the firm have an educational and work experience background that makes the key persons sufficiently expert and knowledgeable to carry out CDB construction projects.
- 4) Whether the contractor owns equipment, tools, machinery, materials or supplies used on construction projects.
- 5) Whether the contractor has financial resources related to or generated by the construction business.
- 6) Whether the contractor has historically subcontracted for a percentage of the work in construction contracts exceeding the requirements of CDB contracts.
- 7) Whether key persons with the firm are engaged in non-construction businesses.

(Source: Amended at 25 Ill. Reg. 10741, effective April 2005)

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF ABILITY TO BID, AND CONDITIONAL PREQUALIFICATION

Section 950.200 Actions Affecting Prequalification

At any time, CDB may consider whether action should be taken concerning prequalification. Actions that may be taken include one or more of the following:

- a) Interim or Emergency Suspension or Modification  
CDB may summarily suspend or modify a contractor's prequalification in accordance with Section 16 of the Capital Development Board Act [20 ILCS 3105/16].
- b) Debarment  
CDB may debar a contractor to exclude it from bidding for CDB contracts as authorized herein or by statute. The period of debarment shall be not less than five years and may be permanent when warranted or as authorized by law.
- c) Modification of Ability to Bid  
CDB may modify or limit a contractor's prequalification as appropriate, including, but not limited to one or more of the following:  
1) Limiting the dollar amount a contractor may bid for a specified period of time, or until a current contract is substantially or fully complete.  
2) Limiting the number of CDB contracts a contractor may enter into for a specified period of time, or until a current contract is substantially or fully complete.  
3) Limiting the aggregate dollar amount of contracts the contractor



## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

property, or conduct indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a contractor.

h) Suspension, debarment, or limits on bidding contracts by any other governmental body.

i) Excessive bid withdrawals on CDB projects.

j) Any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.

(Source: Amended at 25 Ill. Reg. 10741, effective 10/1/2001)

**Section 950.220 Failure to Satisfactorily Perform Work on or Breach of the Terms of CDB Contracts, Private Contracts, or Other Governmental Contracts**

CDB may take action upon prequalification for the contractor's failure to satisfactorily perform work on or breach of the terms of CDB contracts, private contracts, or other governmental contracts, such as, but not limited to, one or more of the following:

a) Failure to timely submit proper post-award documents, such as, but not limited to, bonds, certificates of insurance, and MBE/FBE subcontractor/supplier certifications.

b) Failure to attend or to be properly prepared for pre-construction meetings, pay/progress meetings, or other required meetings set by the project A/E, CDB, or the coordinating contractor.

c) Failure to timely provide schedule submittals or shop drawings.

d) Failure to meet the project schedule for any reason reasonably within the control of the contractor.

e) Failure to provide an acceptable quality of supervision.

f) Failure to provide a supervisor authorized to make timely field decisions on behalf of the firm.

g) Failure to provide sufficient manpower.

h) Failure to timely provide acceptable quality equipment, labor, materials, installation, subcontractors or suppliers, including the failure to provide licensed personnel when necessary.

i) Failure to keep updated as-builts in the field.

j) Failure to follow directives provided by the project A/E or CDB within the scope of the contract documents.

k) Failure to cooperate with other parties to the project to timely resolve project problems that arise.

l) Failure to understand, accept or utilize CDB procedures and standards, or abuse of CDB procedures and standards that results in paper delays, project delays, or the extraordinary expenditure of CDB resources.

m) Failure to provide timely and appropriate pay request documents, including, but not limited to, the Contractor's Schedule of Values form (Development), Contractor's Affidavit and Sworn Statement form (CASS), and lien waivers.

n) Failure to timely submit Requests for Proposals and Change Order

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

documents (RFP/CO), including, but not limited to, adequate documentation of actual direct costs and pricing within conventional industry parameters for public contracts.

o) Failure to timely complete punch list items and contract close-out documents.

p) Failure to demonstrate good faith efforts to meet Fair Employment Practices (FEP) requirements and MBE/FBE goals.

(Source: Added at 25 Ill. Reg. 10741, effective 10/1/2001)

**Section 950.230 Interim or Emergency Suspension or Modification Pursuant to Section 16 of the Capital Development Board Act**

a) CDB may suspend or modify a contractor's prequalification without a prior hearing, or administrative procedure provided in Subpart D, for one or more of the following causes:

1) The public interest, safety or welfare requires such suspension or modification.

2) An event or series of events, including, but not limited to:

A) The filing of an indictment or of formal charges by information (complaint) charging the firm or a key person with the firm with a crime.

B) Suspension or modification of a license or prequalification by another State agency, federal agency or other branch of government after hearing or by agreement.

C) Failure to comply with applicable laws, including, but not limited to, the Minority and Female Business Enterprise Act [30 ILCS 575], the Prevailing Wage Act [820 ILCS 130], the Steel Products Procurement Act [530 ILCS 565], and requirements relating to occupational licensing.

D) Material breach of a contract, including, but not limited to, one or more of the causes set forth in Section 950.220.

E) Failure to satisfactorily perform work on or breach of a CDB contract, including, but not limited to, one or more of the causes set forth in Section 950.220, when:

i) The issue has been brought to the attention of firm management in writing;

ii) All levels of CDB construction administration have met with firm representatives and discussed the issue;

iii) CDB conveys to the contractor what action or nonaction is necessary and in accordance with the contract documents;

iv) CDB has initiated contractual remedies as may be appropriate, such as, but not limited to, stopping the work, rejecting the work, carrying out the work, or ordering acceleration of the work; and

v) The contractor willfully and unreasonably refuses to



## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

comply or to obtain subcontractors, personnel, or other resources that would enable it to comply.

- b) When prequalification is suspended or modified pursuant to this Section, the contractor will be notified in writing, and, within 30 days after the notice, CDB will commence administrative procedures under Subpart D.

- c) When prequalification is suspended or modified pursuant to subsection (a)(2)(E), if the contractor cures the situation within 30 days after the notice, the suspension or modification will be rescinded by written notice. If CDB determines the contractor is making substantial progress toward a cure within 30 days after the notice, CDB may extend in writing the 30-day period by an amount up to an additional 60 days. If the contractor cures the situation within the extended time period, the suspension or modification will be rescinded by written notice. In any case, when the suspension or modification is rescinded, it will be removed from the contractor's prequalification record. If the contractor fails to cure the situation within 30 days or within the time extension, whichever is applicable, CDB will immediately commence administrative procedures under Subpart D.

(Source: Added at 25 Ill. Reg. 10741, effective 4/13/11)

## Section 950.240 Denial of Prequalification

- a) This Section is applicable to contractors who are one of the following:

- 1) First-time applicants for CDB prequalification.
  - 2) Firms who sent a renewal application that arrived at CDB after the prequalification expiration date or could not reasonably be processed before the expiration date.
  - 3) Firms who sent a renewal application that was incomplete or insufficient, so that CDB could not reasonably process the application before the expiration date.
- b) Contractors categorized above will be considered to be new applicants to CDB. In the event that CDB denies prequalification or grants a conditional or modified prequalification, the contractor may request administrative procedures under Subpart D, but shall not be entitled to an administrative hearing.

(Source: Added at 25 Ill. Reg. 10741, effective 4/13/11)

## SUBPART C: APPLICATION OF CDB ACTION

## Section 950.310 Violation of CDB Order

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

When a contractor works as a subcontractor on a CDB project in violation of Section 950.300, continues to submit bids on CDB projects when prohibited, or otherwise violates terms or conditions imposed by CDB, CDB may extend the term of suspension, debarment, nullification, modification, or conditional prequalification, or otherwise suspend, limit or condition the ability to bid on contracts with CDB.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/13/11)

## Section 950.350 Reapplication for Prequalification

When a contractor submits a prequalification application to CDB following a denial, or during or following a period of debarment, suspension, nullification, modification of ability to bid, or conditional prequalification, the contractor must affirmatively demonstrate its responsibility, including demonstrating that the reason for the denial, or imposition of suspension, debarment, nullification, modification, or condition, has been remedied.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/13/11)

## Section 950.360 Extension of CDB Action

The effect of action imposed by CDB will may extend to all affiliates, branches, subsidiaries, divisions, or parent firms of the contractor, and to any firm in which the contractor or its key persons have a legal or beneficial interest, unless CDB determines otherwise in writing.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/13/11)

## SUBPART D: PROCEDURES

## Section 950.400 Review

When information which places a contractor's responsibility and prequalification in question comes to CDB's attention, CDB shall review the facts and documentation. If further inquiry is desirable, it may do such further inquiry, which may result in an informal conference with the contractor and its appropriate staff members with CDB. If such conference is intended by CDB to be the first step in the administrative process, written notice will be sent pursuant to Section 950.410. The contractor's failure to appear at the conference shall be construed to indicate the contractor does not wish to contest the matter and rights to further administrative procedures shall be forfeited.

(Source: Amended at 25 Ill. Reg. 10741, effective 4/13/11)

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

## Section 950.410 Conference

- a) Unless proceedings under Section 16 of the CDB Act [20 ILCS 3105/16] are justified, prior to suspending, conditioning, modifying or nullifying a contractor's prequalification or debarring a contractor, CDB will notify the contractor in writing of its intention to take such action and the basis of the action, and will request that the contractor attend an informal conference with CDB personnel.
- b) When requesting a conference with a contractor, CDB's letter shall request that the contractor bring to the conference any documents, personnel, or other information pertinent to responsibility that it wishes for CDB to consider. The contractor may bring its attorney to the conference, if desired. Within a reasonable time in advance of the conference, CDB shall furnish the contractor with all information in its possession that it deems pertinent to the responsibility and prequalification issue, and shall further advise the contractor in writing that it has the right to inspect its prequalification file.

(Source: Amended at 25 Ill. Reg. 10741, effective April 1, 2000.)

## Section 950.440 Hearings Final Consideration

Within 30 days after the contractor's receipt of the Executive Director's decision on the request for reconsideration, the contractor may request a hearing in writing. All administrative procedures in this Subpart D must be exhausted before CDB will consider the request for a hearing. Hearings shall be conducted in accordance with Hearing Procedures (71 Ill. Adm. Code 100).

Following the completion by the contractor of procedures in Sections 950.410 and 950.430 of this Part, any contractor whose prequalification has been denied, suspended, debarred, nullified, conditioned, modified or limited by CDB may petition the Capital Development Board for a final consideration before the Board. Of the Executive Director's decision, the petition for final consideration shall be in writing, and shall be submitted within 15 days after the contractor's receipt of the Executive Director's decision on the request for reconsideration. The petition shall state the issues the contractor wishes to bring before the Board, shall contain a brief statement of the contractor's position on each issue, and shall include as attachments all documentary supporting evidence the contractor wishes for the Board to consider. The petition shall be heard at the Board's next regularly scheduled meeting provided the meeting is at least 20 days from the date CDB receives the contractor's petition. The contractor shall appear at the meeting and present its case in an informal manner to the Board, and may be assisted by an attorney or other persons as desired. The individual Board members may ask questions as appropriate. Minutes of the proceeding shall be taken. The Board will issue its decision within 30 days after the proceedings.

## DEPARTMENT OF CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 25 Ill. Reg. 10741, effective April 1, 2000.)

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Prequalification of Architects and Engineers

2) Code Citation: 44 Ill. Adm. Code 980

<u>Section Numbers:</u>	<u>Adopted Action:</u>
980.120	Amended
980.160	Amended
980.170	Amended
980.200	Amended
980.300	Amended
980.310	Amended
980.330	New
980.340	New
980.350	New
980.400	Amended
980.410	Amended
980.440	Amended
980.450	Amended
980.460	Amended
980.470	Amended
980.510	Amended
980.520	Amended
980.530	Amended

4) Statutory Authority: Implementing the Capital Development Board Act [20 ILCS 3105] and authorized by Section 16 of that Act, Sections 5-25 of the Illinois Procurement Code [30 ILCS 500] and Section 20 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act [30 ILCS 535].

5) Effective date of Amendments: August 10, 2001

6) Do these amendments contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal published in Illinois Register: June 1, 2001; 25 Ill. Reg. 6790.

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: The only changes made were in response to comments made by the Joint Committee on Administrative Rules. All changes were not substantive and were limited to grammatical

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

and stylistic changes.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? No

15) Summary and purpose of amendment: To clarify and update procedures for prequalifying architects and engineers.

16) Information and questions regarding these adopted amendments shall be directed to:

Claire Gibson, Deputy Chief Counsel  
Capital Development Board  
3rd Floor, Wm. G. Stratton Bldg.  
Springfield, Illinois 62706  
217/782-1392

The full text of the adopted amendments begins on the next page:





## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

"Parent Office" means the primary location of the A/E's place of business.

"Key Person" means any individual who holds 5% or more ownership interest in the firm. In the event the firm is owned by another corporation, partnership, trust or business association, any individual within that organization or who is a trust beneficiary who holds a 5% or more ownership or beneficial interest is considered a "key person". Regardless of ownership interest, any officer, partner, managing agent or director is considered a "key person". This definition also includes any individual who assumes the responsibility of an officer, owner, partner, director, etc., regardless of ownership interest.

"Performance Record" consists of, but is not limited to, the following:

Evidence of material compliance with all CDB contract requirements.

Data indicating the A/E has met all contract requirements on previous contracts, private and public.

"Prequalification" is the status granted by CDB to responsible A/Es that permits them to make submittals on CDB projects or be awarded a CDB contract.

"Profile Codes" means branches of knowledge or expertise of architectural or engineering practice that may be provided by firms and that are listed on CDB's A/E prequalification application.

"Responsibility" is a determination made by CDB that the A/E is a responsible A/E. The determination may be made at any time. Because responsibility is affected by such things as financial resources, performance records, and organizational and operational factors, all of which are subject to change, the initial determination of responsibility, made through evaluation of an application to CDB, may be changed upon receipt of additional or different information. The A/E is required to inform CDB of any significant change to the information submitted in its application. Each A/E must provide CDB with adequate documentation of responsibility. CDB will ordinarily provide forms for this information. CDB may supplement this information from other sources and may require additional documentation at any time. A responsibility determination may also be verified on an ongoing basis through other information, including but not limited to performance evaluations and reference contacts.

"Responsible A/E" is a firm that:

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

Has adequate financial resources to perform the contract, or the ability to obtain them. This includes, but is not limited to, the ability to obtain required insurance from insurance companies acceptable to CDB.

Is able to comply with the contract requirements, considering the firm's other business obligations.

Has a satisfactory performance record.

Has a satisfactory record of integrity and business ethics.

Has the necessary organization, experience, accounting and operational controls, and technical skills.

Has provided all information required by the Financial Interest and Potential Conflicts of Interest Disclosure forms required under Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35].

Is otherwise qualified and eligible to receive a contract award under applicable laws and regulations.

"Trade Codes" means the professional practice in which the individual is licensed, or the firm is registered, by DPR to practice and, for general engineering licenses, any area of specialty within that practice.

(Source: Amended at 25 Ill. Reg. 10759 - effective AUG 11 2001)

### Section 980.160 Sources for Determining Responsibility

To determine an A/E's responsibility, CDB may utilize information obtained from one or more of the following sources. In evaluating the information, greater consideration shall be given to the A/E's most recent projects and projects with CDB.

a) A/E prequalification application form.

1) A/E applications shall require at a minimum:

A) Completed application form;

B) The disclosure of the name of each key person associated with the firm, and their respective percentage of ownership;

C) Work experience relevant to the type of practice and profile codes requested;

D) Copies of the individual licenses for sole ownership firms transacting business under the individual's real name and applicable professional design firm registration with the Department of Professional Regulation for all firms;

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

- E) Certification of compliance with statutory requirements;  
 F) Work history reference checks. References obtained **provided** may be verified and documented by the following methods:  
 i) Telephone reference checks; or  
 ii) Reference questionnaire; and

- G) CDB work history, if CDB projects have been awarded.

## 2) Application updates

The A/E shall have an affirmative duty to update significant information within 10 days after occurrence. Failure to disclose as required may lead to action on prequalification. (See Section 980.310(c).) Significant changes, of which CDB shall be notified, include, but are not limited to:

- A) Change of entity corporate structure, including sole owners, partnerships, and federal employee identification number;  
 B) Change of name;  
 C) Change of address;  
 D) Change or loss of personnel in areas that may affect the types of professional practice or profile codes that may have been granted;  
 E) Minority/Female owned firm status;  
 F) Change or initiation of hearing in licensure or registration status with the Department of Professional Regulation;  
 G) Loss of Secretary of State "good standing" status;  
 H) Filing of bankruptcy;  
 I) Filing of formal criminal charges against the firm or its officers, owners or employees;  
 J) Suspension or debarment by another governmental agency; and  
 K) Contract terminations.

- b) Satisfactory CDB work history  
 CDB may review documentation of the A/E's current and past work and performance history, including adherence to CDB's rules, resolutions, and procedures. Such documentation includes, but is not limited to, performance evaluations prepared by CDB, user agencies, or contractors.

- c) Other governmental entities  
 CDB may conduct history reference checks by contacting Federal, State or local governmental entities.

- d) Other sources  
 In order to determine responsibility, CDB may conduct reference checks or gather relevant information from any other source, which may include, but is not limited to:

- 1) Financial institutions;
- 2) Periodicals;
- 3) Newspapers;
- 4) Court records; **and**
- 5) Dun and Bradstreet reports;
- 6) Audited financial statements;
- 7) Any type of public record.

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

- e) Previous employment history  
 For any newly organized firm or a firm with a limited work history, CDB may conduct individual performance reference checks on any or all personnel.

- f) Additional information

CDB may request additional information from the A/E at any time.

(Source: Amended at 25 Ill. Reg. 10759, effective AUG 10 2001)

## Section 980.170 Department of Professional Regulation Action

- a) Firms prequalified with CDB shall notify CDB in writing within 10 working days when the Department of Professional Regulation initiates proceedings to refuse to renew, suspend or revoke the registration or license of any individual or firm, or to impose any other disciplinary sanction.

- b) Upon notification, prequalification will be reviewed and appropriate action taken under Subpart B. In addition, if it is found that notice was not provided as required, CDB may take action under Subpart B.

(Source: Amended at 25 Ill. Reg. 10759, effective AUG 10 2001)

## Section 980.200 Processing of Architect-Engineer Prequalification Application

- a) A/E's must complete a prequalification application, including the Financial Interest and Potential Conflicts of Interest forms required under Section 50-35 of the Illinois Procurement Code [30 ILCS 500/50-35].

- b) Processing of applications by CDB may require up to 45 days after receipt of all requested information and a completed application.

- c) Applications for renewal will ordinarily be sent to the A/E's approximately 60 days before the expiration of current prequalification and are available electronically on CDB's Internet site at [www.cdb.state.il.us](http://www.cdb.state.il.us). A/E's who do not receive an application are responsible for obtaining one at least 45 days ~~contacting-CDB~~ prior to expiration ~~to request an application~~. When all information received is complete and satisfactory, processing may take up to 45 days. When any information is incomplete or unsatisfactory, a longer processing time will be required. A/E's will be notified when information is incomplete or unsatisfactory. Unless otherwise specified in writing by CDB, the term of prequalification shall be two years from the end of the month the prequalification begins. When prequalification is granted, the A/E will be notified in writing of the expiration date, which will also be entered on CDB's electronic program. CDB may grant a shorter term of prequalification by



## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

agreement with the A/E, when a determination is made that a shorter period is justified, or when a special prequalification is developed specifically for a certain project. Updated or new A/E information including the term of prequalification will be entered on CDB's electronic program weekly. The electronic program will be capable of, among other things, sorting A/Es by profile code to produce lists of A/Es in various profile codes. At the beginning of each month, a list of A/Es whose prequalification expires in approximately 60 days will be generated.

d) Applications may be sent to CDB by facsimile--provided that the original application is received by CDB within five business days.

e) CDB shall review and evaluate each application received, which may include one or more of the following actions:

- 1) Reviewing to determine whether the application is filled out in accordance with the instructions provided;
- 2) Contacting work references or any other possible sources of pertinent information;
- 3) Requesting additional information from the applicant;
- 4) Reviewing CDB A/E performance evaluations; and
- 5) Meeting with the applicant at the request of CDB or the applicant.

f) CDB shall deny prequalification status to any firm that has not affirmatively demonstrated its responsibility. CDB's determination of responsibility on an application for prequalification shall be final. An individual or firm may not submit a new or revised application for prequalification within 180 days after any denial of an application.

(Source: Amended at 25 Ill. Reg. 10759, effective 4/6/2001)

SUBPART B: SUSPENSION, DEBARMENT, MODIFICATION OF PREQUALIFICATION, AND CONDITIONAL PREQUALIFICATION

Section 980.300 Actions Affecting Responsibility and Prequalification

At any time, CDB may consider whether an action is warranted concerning an A/E's prequalification. Actions that may be taken include one or more of the following:

- a) Interim or Emergency Suspension or Modification  
CDB may summarily suspend or modify an A/E's prequalification in accordance with Section 16 of the Capital Development Board Act [20 ILCS 3105/16].
- b) Debarment  
CDB may debar an A/E to exclude it from making submittals for CDB contracts as authorized by statute. The period of debarment shall be not less than five years and may be permanent when warranted or as authorized by law [20 ILCS 3105/16].
- c) Modification of Prequalification

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

CDB may modify or restrict an A/E's prequalification as appropriate, including, but not limited to, one or more of the following:

- 1) Limiting the size or type of contracts for which an A/E may submit proposals for a specified period of time, or until a current contract is substantially or fully complete.
- 2) Limiting the number of CDB contracts an A/E may enter into for a specified period of time, or until a current contract is substantially or fully complete.
- 3) Limiting the aggregate dollar amount of contracts the A/E may enter into with CDB.
- 4) Imposing limits as set forth above pending performance on the A/E's next CDB contract(s) in instances where the A/E has no current CDB contracts.
- d) Conditional Prequalification  
CDB may condition prequalification (which may be otherwise limited) on the A/E's successful utilization of a management plan, evaluations, conferences, or other methods designed to achieve satisfactory performance or compliance with contract requirements.
- e) Suspension  
CDB may suspend an A/E firm or disqualify an A/E firm temporarily from submitting with CDB, for a period of time up to five years. The A/E's failure to timely pursue administrative action as provided by Subpart D of this Part shall constitute consent of the A/E to CDB's action.

(Source: Amended at 25 Ill. Reg. 10759, effective 4/6/2001)

Section 980.310 Causes for Suspension, Debarment, Modification of Prequalification, and Conditional Prequalification

CDB may determine an A/E is not responsible and suspend, debar or otherwise modify a prequalification or issue a conditional prequalification based upon one or more of the following:

- a) Failure to satisfactorily perform work on CDB contract(s), private contract(s), or other governmental contract(s). (See also Section 980.330.)
- b) Breach of the terms of a CDB contract(s), private contract(s), or other governmental contract(s). (See also Section 980.330.) Breach of a CDB contract includes but is not limited to:
  - 1) Failure to submit required documents and drawings, including record drawings, according to the project schedule, causing a delay in the commencement, completion or close-out of a project.
  - 2) Failure to adhere to quality standards of the applicable profession or required codes and standards for a particular type of construction so that the public health and safety are jeopardized by unsafe buildings.
  - 3) Failure to perform supervisory and observer functions as specified in the contract.

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

4) ~~Failure to notify CDB of problems with any projects, which failure results in time delays or an increase in cost of the project.~~

- c) Making false or misleading statements or failing to disclose or update significant information in connection with CDB procedures or documents, including but not limited to the prequalification application.
- d) Violation of civil or criminal Federal or State statutes or administrative rules and regulations. In the case of criminal violations, indictment or filing of formal charges by information (complaint) shall constitute adequate evidence for a determination of non-responsibility.
- e) Financial instability which may be evidenced by bankruptcy, failure to timely pay consultants, difficulty in obtaining acceptable insurance, attempts to assign contract proceeds, or other indications of serious business management deficiencies.
- f) Failure to understand, accept or utilize CDB procedures and standards, or abuse of CDB procedures and standards, which results in the extraordinary expenditure of CDB resources.
- g) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, or conduct indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of an A/E.
- h) Suspension, debarment, or limits on contracts by any other governmental body.
- i) Failure to be properly licensed or registered with the Department of Professional Regulation (DPR), being the subject of disciplinary sanctions by DPR, or the subject of initiation of proceedings by DPR to refuse to renew, suspend or revoke the registration or license of the A/E, or to impose any other disciplinary sanction.
- j) Any other cause of so serious or compelling a nature that it affects the present responsibility of an A/E.

(Source: Amended at 25 Ill. Reg. 10759, effective 4-11-2001)

**Section 980.330 Failure to Satisfactorily Perform Work on or Breach of the Terms of CDB Contracts, Private Contracts, or Other Governmental Contracts**

CDB may take action upon prequalification for the A/E's failure to satisfactorily perform work on or breach of the terms of CDB contracts, private contracts, or other governmental contracts, such as, but not limited to, one or more of the following:

- a) Failure to timely submit required documents and drawings, including record drawings, according to the project schedule, causing a delay in the commencement, completion or close out of a project.
- b) Failure to adequately or timely respond to technical review comments

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

- c) and directions.
- d) Failure to adhere to contractual document requirements.
- e) Failure to adequately or timely notify CDB of project problems or failure to cooperate with other parties to the project to timely resolve problems.
- f) Failure to timely or adequately resolve design issues.
- g) Failure to timely or adequately submit budget and estimating documents.
- h) Failure to meet quality standards of the applicable profession or required codes and standards for a particular type of construction.
- i) Failure to provide proper field administration and observer services.
- j) Failure to provide proper personnel or proper and timely responses to requests for information in the field.
- k) Failure to provide timely and adequate record drawings.
- l) Failure to meet contractual design schedule dates.
- m) Failure to timely process change orders and contractor pay requests.
- n) Failure to follow directives from CDB within the scope of the contract documents.
- o) Failure to attend or to be properly prepared for project meetings.
- p) Failure to understand, accept or utilize CDB procedures and standards, or abuse of CDB procedures and standards that results in paper delays, project delays, or the extraordinary expenditure of CDB resources.
- q) Failure to submit proper pay or modification requests, in accordance with the contractual provisions, with adequate documentation of costs and pricing within conventional industry parameters for public contracts.

(Source: Added at 25 Ill. Reg. 10759, effective 4-11-2001)

**Section 980.340 Interim or Emergency Suspension or Modification Pursuant to Section 16 of the Capital Development Board Act**

- a) CDB may suspend or modify an A/E's prequalification without a prior hearing or administrative procedure provided in Subpart D, for one or more of the following causes:

- 1) The public interest, safety or welfare requires such suspension or modification.
- 2) An event or series of events including, but not limited to:
  - A) The filing of an indictment or of formal charges by information (complaint) charging the firm or a key person with the firm with a crime.
  - B) Suspension or modification of a license or prequalification by another State agency, federal agency or other branch of government after hearing or by agreement.
  - C) Failure to comply with applicable laws.
  - D) Material breach of a contract, including, but not limited to, one or more of the causes set forth in Section 980.330.



## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

E) Failure to satisfactorily perform work on or breach of a CDB contract, including, but not limited to, one or more of the causes set forth in Section 980.330 when:

- i) The issue has been brought to the attention of firm management in writing;
- ii) All levels of CDB construction administration have met with firm representatives and discussed the issue;
- iii) CDB conveys to the A/E what action or nonaction is necessary and in accordance with the contract documents;
- iv) The A/E willfully and unreasonably refuses to comply or to obtain consultants, personnel, or other resources that would enable it to comply.

b) When prequalification is suspended or modified pursuant to this Section, the A/E will be notified in writing and, within 30 days after the notice, CDB will commence administrative procedures under Subpart D.

c) When prequalification is suspended or modified pursuant to subsection (a)(2)(E), if the A/E cures the situation within 30 days after the notice, the suspension or modification will be rescinded by written notice to the A/E. If CDB determines the A/E is making substantial progress toward a cure within 30 days after the notice, CDB may extend in writing the 30-day period by an amount up to an additional 60 days. If the A/E cures the situation within the extended time period, the suspension or modification will be rescinded by written notice. In any case, when suspension or modification is rescinded, it will be removed from the A/E's prequalification record. If the A/E fails to cure the situation within 30 days or within the time extension, whichever is applicable, CDB will immediately commence administrative procedures under Subpart D.

(Source: Added at 25 Ill. Reg. 10759, effective AUG 11 2001)

**Section 980.350 Denial of Prequalification**

a) This Section is applicable to A/E's who are one of the following:

- 1) First-time applicants for CDB prequalification.
- 2) Firms who sent a renewal application that arrived at CDB after the prequalification expiration date or could not reasonably be processed before the expiration date.
- 3) Firms who sent a renewal application that was incomplete or insufficient, so that CDB could not reasonably process the application before the expiration date.

b) A/E's categorized above will be considered to be new applicants to CDB. In the event that CDB denies prequalification or grants a conditional or modified prequalification, the A/E may request administrative procedures under Subpart D, but shall not be entitled to an

## CAPITAL DEVELOPMENT BOARD

## NOTICE OF ADOPTED AMENDMENTS

administrative hearing.

(Source: Added at 25 Ill. Reg. 10759, effective AUG 11 2001)

**SUBPART C: APPLICATION OF CDB ACTION****Section 980.400 General**

Suspension, debarment, nullification of prequalification, modification of prequalification, or issuance of conditional prequalification, or denial of prequalification by CDB is applicable to an A/E's direct contracts with CDB and any consultant subcontracts on other contracts on CDB projects, unless CDB determines otherwise in writing.

(Source: Amended at 25 Ill. Reg. 10759, effective AUG 11 2001)

**Section 980.410 Violation of CDB Order**

If an A/E is subject to a CDB order suspending or debarring the A/E, or nullifying or modifying prequalification, or making prequalification conditional, or denying prequalification, and the A/E violates the order in any manner, including but not limited to continuing to make submittals on CDB projects, or working as a subcontracted consultant on a CDB project, CDB may extend the term of suspension, debarment, nullification, modification or conditional prequalification, or otherwise limit or condition the ability to make submittals on contracts with CDB.

(Source: Amended at 25 Ill. Reg. 10759, effective AUG 11 2001)

**Section 980.440 Reapplication for Prequalification**

When an A/E submits a prequalification application to CDB following a denial, or during or following a period of debarment, suspension, nullification, modification of prequalification, or conditional prequalification, the A/E must affirmatively demonstrate its responsibility, including demonstrating that the reason for the denial, or imposition of suspension, debarment, nullification, modification, or condition, has been remedied.

(Source: Amended at 25 Ill. Reg. 10759, effective AUG 11 2001)

**Section 980.450 Extension of CDB Action**

The effect of an action imposed under this Subpart by CDB will may extend to all office locations of the A/E and to any firm in which the A/E or its key



CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

persons have a legal or beneficial interest, unless CDB determines otherwise in writing.

(Source: Amended at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

**Section 980.460 Effect on Current Contracts (repeated)**

Current CDB contracts may be terminated when an A/E is determined to be non-responsible and it is in the public interest to do so, whether or not the non-responsibility has a direct connection with the current contract. Contracts may be terminated with or without further action on the A/E's prequalification.

(Source: Old Section repealed at 24 Ill. Reg. 6663, effective April 17, 2000; new Section added at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

**Section 980.470 Basis of Decisions**

a) CDB shall make determinations as appropriate concerning the substance of an A/E's business as opposed to its form and base its decisions on the substance. When an A/E attempts to evade the effects of a possible or actual finding of non-responsibility by changes of address, multiple addresses, changes in personnel or their titles, formation of new companies, or by other devices, CDB may take action pursuant to Section 980.300 and Subparts B and Subpart C of this Part.

b) A/Es who are newly formed business concerns having substantially the same owners, officers, directors, or beneficiaries as a previously existing non-responsible firm will be declared non-responsible unless the new organization can demonstrate it was not set up for the purpose of avoiding an earlier declaration of non-responsibility.

(Source: Amended at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

SUBPART D: PROCEDURES

**Section 980.510 Notice of CDB Action**

Unless proceedings under Section 16 of the CDB Act [20 ILCS 3105/16] are justified, prior to suspending, conditioning, modifying or nullifying an A/E's prequalification or debarring an A/E, CDB will notify the A/E in writing by certified mail of its intention to take such action and the basis of the action, and will request that the A/E attend an informal conference with CDB personnel. The A/E may bring to the conference any documents, personnel, or other pertinent information that it wishes for CDB to consider. The A/E may

CAPITAL DEVELOPMENT BOARD

NOTICE OF ADOPTED AMENDMENTS

bring its attorney to the conference, if desired. Within a reasonable time in advance of the conference, CDB shall furnish the A/E with all pertinent information in its possession that it deems pertinent and shall advise the A/E in writing that it has the right to inspect its prequalification file. Further conferences may be scheduled by agreement of CDB and the A/E. The A/E's failure to appear at the conference shall be construed to indicate the A/E does not wish to contest the matter and rights to further administrative proceedings shall be forfeited.

(Source: Amended at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

**Section 980.520 Executive Director Decision and Request for Reconsideration**

Following CDB's conference with the A/E, the conference committee shall forward a recommendation to the Executive Director. The A/E will be notified in writing of the Executive Director's decision. Within 15 days after receipt of the Executive Director's decision, the A/E may request the Executive Director's reconsideration in writing, including as attachments any and all supporting evidence not previously submitted. CDB shall respond to the request for reconsideration within 15 days after CDB's receipt.

(Source: Amended at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

**Section 980.530 Hearings**

Within 30 days after the A/E's receipt of the Executive Director's decision on ~~or the decision~~ upon reconsideration ~~if applicable~~, the A/E may request a hearing in writing. All administrative procedures in this Subpart D must be exhausted before CDB will consider the request for a hearing. Hearings shall be conducted in accordance with Hearing Hearings Procedures [71 Ill. Adm. Code 100].

(Source: Amended at 25 Ill. Reg. 10759, effective \_\_\_\_\_)

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Discipline and Grievances2) Code Citation: 20 Ill. Adm. Code 5043) Section Numbers: Adopted Action:

504.800 Amendments  
 504.810 Amendments  
 504.820 Amendments  
 504.830 Amendments  
 504.840 Amendments  
 504.850 Amendments  
 504.870 Amendments  
 504.900 Amendments  
 504.905 Amendments  
 504.920 Amendments  
 504.930 Amendments  
 504.940 Amendments

4) Statutory Authority: Implementing the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) and implementing and authorized by Sections 3-2-2, 3-8-8, and 3-10-9 of the Unified Code of Corrections [730 ILCS 5/3-2-2, 3-8-8, and 3-10-9].5) Effective Date of Amendments: September 1, 20016) Does this rulemaking contain an automatic repeal date? No7) Does these amendments contain incorporations by reference? No8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.9) Notice of Proposal Published in Illinois Register: March 23, 2001, 25 Ill. Reg. 407510) Has JCAR issued a Statement of Objection to these amendments? No11) Differences between proposal and final version: None12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes13) Will these amendments replace emergency amendments currently in effect?  
No14) Are there any amendments pending on this Part? No

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Amendments: The time frames in which committed persons must file grievances has been changed to within 60 days of the discovery of the incident or problem which gave rise to the grievance. The administration may more effectively and efficiently respond to grievances and resolve potential problems if the grievances are more current. The internal processing time frames for each step of the grievance have been removed; overall end time frames for processing local grievances and appeals have been included instead so that a committed person is aware when he or she can reasonably expect a final response. The makeup of the Administrative Review Board has been modified as it is not always possible to have a citizen member present, and it is not feasible to delay the hearing unless the committed person objects. Procedures regarding direct reviews by the Administrative Review Board have also been updated to reflect current practice.

16) Information and questions regarding these adopted amendments shall be directed to:

Patricia Lubben, Rules Coordinator  
 Department of Corrections  
 1301 Concordia Court  
 P. O. Box 19277  
 Springfield, Illinois 62794-9277  
 217/522-2666, extension 6507

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT  
 CHAPTER I: DEPARTMENT OF CORRECTIONS  
 SUBCHAPTER e: OPERATIONS

## PART 504

## DISCIPLINE AND GRIEVANCES

## SUBPART A: ADMINISTRATION OF DISCIPLINE -- ADULT

Section  
 504.10  
 504.12  
 504.15  
 504.20  
 504.30  
 504.40  
 504.50  
 504.60  
 504.70  
 504.80  
 504.90  
 504.100  
 504.110  
 504.115  
 504.120  
 504.130  
 504.140  
 504.150

Applicability  
 Definitions  
 Responsibilities  
 Offenses and Maximum Penalties  
 Preparation of Disciplinary Reports  
 Temporary Confinement  
 Review of Disciplinary Reports  
 Investigation of Major Disciplinary Reports  
 Adjustment Committee and Program Unit Composition  
 Adjustment Committee Hearing Procedures  
 New or Additional Proceedings  
 Program Unit Hearing Procedures  
 Computation of Discipline for Multiple Offenses  
 Indeterminate Segregation Placement  
 Reduction in Segregation Placement  
 Demotion and Restoration in Grade  
 Restitution Procedures  
 Restoration of Good Time

## SUBPART B: ADMINISTRATION OF DISCIPLINE -- JUVENILE

Section  
 504.200  
 504.202  
 504.205  
 504.210  
 504.220  
 504.230  
 504.240  
 504.250  
 504.260  
 504.270  
 504.275  
 504.280  
 504.290  
 504.300

Applicability  
 Definitions  
 Responsibilities  
 Offenses and Maximum Penalties  
 Preparation of Disciplinary Reports  
 Temporary Confinement  
 Review of Disciplinary Reports  
 Adjustment Committee and Program Unit Composition  
 Adjustment Committee Hearing Procedures  
 New or Additional Proceedings  
 Program Unit Hearing Procedures  
 Computation of Discipline for Multiple Offenses  
 Restitution Procedures  
 Restoration of Good Time

## SUBPART C: ADMINISTRATION OF DISCIPLINE -- COMMUNITY SERVICES

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

Section  
 504.400  
 504.402  
 504.405  
 504.410  
 504.420  
 504.430  
 504.440  
 504.450  
 504.460  
 504.470  
 504.480  
 504.490  
 504.500  
 504.510

Applicability  
 Definitions  
 Responsibilities  
 Offenses and Maximum Penalties  
 Preparation of Disciplinary Reports  
 Temporary Confinement  
 Review of Disciplinary Reports  
 Adjustment Committee and Program Unit Composition  
 Adjustment Committee Hearing Procedures  
 New or Additional Proceedings  
 Program Unit Hearing Procedures  
 Computation of Penalty for Multiple Offenses  
 Restitution Procedures  
 Restoration of Good Time

SUBPART D: SEGREGATION, INVESTIGATIVE CONFINEMENT AND  
 ADMINISTRATIVE DETENTION -- ADULT

Section  
 504.600  
 504.602  
 504.605  
 504.610  
 504.620  
 504.630  
 504.640  
 504.650  
 504.660  
 504.670

Applicability  
 Definitions  
 Responsibilities  
 Placement in Segregation Status  
 Segregation Standards  
 Investigative Confinement  
 Confinement Pending Transfer (Repealed)  
 Confinement in Control Segregation (Repealed)  
 Administrative Detention  
 Recreation for Persons in Segregation Status

## SUBPART E: CONFINEMENT PROCEDURES -- JUVENILE

Section  
 504.700  
 504.710  
 504.715  
 504.720  
 504.730

Applicability  
 Definitions  
 Responsibilities  
 Placement in Confinement  
 Confinement Procedures

## SUBPART F: GRIEVANCE PROCEDURES FOR COMMITTED PERSONS

Section  
 504.800  
 504.802  
 504.805  
 504.810  
 504.820

Applicability  
 Definitions  
 Responsibilities  
 Filing of Grievances  
 Grievance Officer



## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

504.830 Grievance Procedures  
 504.840 Emergency Procedures  
 504.850 Appeals  
 504.860 Records  
 504.870 Direct Review by Administrative Review Board

## SUBPART G: GRIEVANCE PROCEDURES FOR RELEASEES

## Section

504.900 Applicability  
 504.905 Definitions  
 504.910 Responsibilities  
 504.920 Filing of Grievances  
 504.930 Review of Grievances  
 504.940 Appeals

TABLE A Offenses and Maximum Penalties -- Adult Division

TABLE B Offenses and Maximum Penalties -- Juvenile Division

TABLE C Offenses and Maximum Penalties -- Community Services Division

**AUTHORITY:** Implementing the Americans With Disabilities Act of 1990 (42 USC 12101 et seq.) and implementing and authorized by Sections 3-2-2, 3-5-2, 3-6-3, 3-8-7, 3-8-8, 3-10-8, and 3-10-9 of the Unified Code of Corrections [730 ILCS 5/3-2-2, 3-5-2, 3-6-3, 3-8-7, 3-8-8, 3-10-8, and 3-10-9]. Sections 504.70 and 504.450 are implementing a Consent Decree (U.S. Department of Justice vs. the State of Illinois, #S-CIV-76-0158, S.D. Ill., 1978). Sections 504.80 and 504.460 are also implementing a Consent Order (Arsberry vs. Sielaff, #74 C 1918 and Longstreet vs. Sielaff, #74 C 1951, N.D. Ill., 1982).

**SOURCE:** Adopted at 8 Ill. Reg. 14427, effective August 1, 1984; amended at 12 Ill. Reg. 8351, effective June 1, 1988; amended at 16 Ill. Reg. 10430, effective July 1, 1992; amended at 22 Ill. Reg. 1206, effective January 1, 1998; amended at 25 Ill. Reg. 10775, effective 8-1-2001.

## SUBPART F: GRIEVANCE PROCEDURES FOR COMMITTED PERSONS

## Section 504.800 Applicability

This Subpart applies to committed persons assigned to correctional facilities within the ~~Adult-Juvenile~~ and-Community-Services Divisions ~~of the~~ Department of Corrections.

(Source: Amended at 25 Ill. Reg. 10775, effective 8-1-2001)

## Section 504.810 Filing of Grievances

a) A committed person shall first attempt to resolve incidents, problems,

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

or complaints other than complaints concerning disciplinary proceedings through his or her counselor. If a committed person is unable to resolve the complaint informally or if the complaint concerns a disciplinary proceeding, the individual may file a written grievance on a grievance form that ~~which~~ shall be made available in all living units. A grievance shall be filed within 60 days ~~6-months~~ after the discovery of the incident, occurrence, or problem which gives rise to the grievance ~~or within 6-months after the receipt of--a decision--concerning--an--informal--resolution--thereof~~. However, if a committed person can demonstrate that a grievance was not timely filed for good cause, the grievance shall be considered. The grievance procedure shall not be utilized for complaints regarding decisions that ~~which~~ are outside the authority of the Department, such as parole decisions, clemency, or orders regarding length of sentence or decisions that ~~which~~ have been rendered by the Director.

b) The grievance form shall be addressed to the Grievance Officer and shall be deposited in the living unit mailbox or other designated repository.

c) Staff assistance shall be available as requested by ~~for~~ those committed persons who cannot prepare their grievances unaided as determined by institutional staff.

1) All committed persons shall be entitled to file grievances regardless of their disciplinary status or classification.

2) Each facility shall take reasonable steps to ensure that the grievance procedure is accessible to committed persons who are impaired, disabled, or unable to communicate in the English language.

d) Committed persons shall be informed of the grievance procedure at the admitting facility and may request further information regarding the procedure from their counselors.

1) The written procedure shall be available to all committed persons.

2) A committed person unable to speak or read the English language may request that the procedure be explained in the individual's own language.

e) Disciplinary action or reprisals may not be taken against a committed person solely for using the grievance procedure. A committed person may submit a grievance alleging that a reprisal has been made against him or her.

(Source: Amended at 25 Ill. Reg. 10775, effective

## Section 504.820 Grievance Officer

a) The Chief Administrative Officer shall appoint 2 or more employees who may serve as a Grievance Officer to attempt to resolve problems, complaints, and grievances that ~~which~~ committed persons have been

DEPARTMENT OF CORRECTIONS  
NOTICE OF ADOPTED AMENDMENTS

- b) unable to resolve through routine channels.  
No person who is directly involved in the subject matter of the grievance or who was a member of the Adjustment Committee that heard a disciplinary report concerning the grievance may serve as the Grievance Officer reviewing that particular case.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 1981)

## Section 504.830 Grievance Procedures

- a) A Grievance Officer shall review grievances at least weekly, ~~whenever possible~~ provided that one or more grievances have been filed.  
b) The Grievance Officer shall promptly submit a copy of any grievance alleging discrimination based on disability to the facility ADA Coordinator. The facility ADA Coordinator shall conduct such investigation as deemed appropriate and make written recommendations to the Chief Administrative Officer for resolution of the grievance.  
c) A committed person may be afforded an opportunity to appear before the Grievance Officer. The Officer may call witnesses as deemed appropriate.  
d) The Grievance Officer shall consider the grievance and report his or her findings and recommendations in writing to the Chief Administrative Officer ~~within 30 days after the grievance is received by the Officer, whenever possible~~. The Chief Administrative Officer shall advise the committed person of the decision in writing within 2 months after receipt of the written grievance, where reasonably feasible under the circumstances ~~15 days after receiving the Officer's report, whenever possible~~.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 1981)

## Section 504.840 Emergency Procedures

- A committed person may request a grievance be handled on an emergency basis by forwarding the grievance directly to the Chief Administrative Officer.  
a) If the Chief Administrative Officer determines that there is a substantial risk of imminent personal injury or other serious or irreparable harm to the committed person, the grievance shall be handled on an emergency basis.  
b) The Chief Administrative Officer shall expedite processing of the grievance and respond to the committed person, ~~within 3 days after receipt of the grievance, whenever possible~~, indicating what action shall be or has been taken.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 1981)

DEPARTMENT OF CORRECTIONS  
NOTICE OF ADOPTED AMENDMENTS

## Section 504.850 Appeals

- a) If, after receiving the response of the Chief Administrative Officer, the committed person still feels that the problem, complaint or grievance has not been resolved to his or her satisfaction, he or she may appeal in writing to the Director within 30 days after the date of the decision ~~receipt of the response~~. Copies of the Grievance Officer's report and the Chief Administrative Officer's decision should be attached.  
b) The Director shall review the grievance and the responses of the Grievance Officer and Chief Administrative Officer and shall determine whether the grievance requires a hearing before the Administrative Review Board. If it is determined that the grievance is without merit or can be resolved without a hearing, the committed person shall be advised of this disposition, in writing, ~~within 60 days after receipt of the grievance, whenever possible~~.  
c) An ~~A two-member~~ Administrative Review Board shall be appointed by the Director. One ~~At least one~~ member of the Board may ~~shall be~~ a citizen from the community ~~an individual not employed by the Department, whenever possible~~. A The Department member shall be designated as chairperson.  
d) The Administrative Review Board shall meet as frequently as necessary and may schedule hearings on grievances. Hearings may be conducted in person or via video or telephonic conference. The Board may call witnesses or examine records at its discretion.  
e) The Administrative Review Board shall submit to the Director a written report of its findings and recommendations ~~within 60 days after receipt of the grievance, whenever possible~~.  
f) The Director shall review the findings and recommendations of the Board and make a final determination of the grievance within 6 months after receipt of the appealed grievance, where reasonably feasible under the circumstances ~~15 days after receipt of the Board's report, whenever possible~~. The committed person shall be sent a copy of the Director's decision.  
g) In those instances where a committed person is appealing a grievance determined by the Chief Administrative Officer to be of an emergency nature, the Administrative Review Board shall expedite processing of the grievance ~~submit its recommendation within 21 days after receipt of the grievance, whenever possible~~.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 1981)

## Section 504.870 Direct Review by Administrative Review Board

- a) Committed persons shall submit grievances directly to the Administrative Review Board when grieving:  
1) Decisions regarding protective custody placement, including

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

- continued placement in or release from protective custody.
- 2) Decisions regarding the involuntary administration of psychotropic medication.
- 3) Decisions regarding disciplinary proceedings which were made at a facility other than the facility where the committed person is currently assigned.
- 4) Other issues except personal property issues which pertain to a facility other than the facility where the committed person is currently assigned.
- b) The Administrative Review Board shall review and process the grievance in accordance with Section 504.850 submit its recommendation within 30 days after receipt of the grievance, whenever possible.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 2001)

## SUBPART G: GRIEVANCE PROCEDURES FOR RELEASEES

## Section 504.900 Applicability

This Subpart applies to committed persons who have been released from correctional facilities and are under the supervision of the Juvenile or Community Services Divisions of the Department of Corrections.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 2001)

## Section 504.905 Definitions

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Facility ADA Coordinator" means the person or persons designated by the Director to coordinate efforts of the facility in carrying out its responsibilities under Title II of the Americans With Disabilities Act (42 USC 5-5-6- 12101 et seq.).

"Parole Supervisor" means the supervisor of a parole office or a geographic area Community Services--Gene--or--the--supervisor--of--the Special-Intensive-Supervision-Unit within the Department.

"Releasee" means any committed person who has been released under conditional supervision in Illinois due to parole or mandatory supervised release, but who has not yet been discharged from a correctional facility.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 2001)

## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

SEP 1 2001

## Section 504.920 Filing of Grievances

Releasees who have been unable to resolve complaints or problems through parole staff may file a written grievance with the Parole Supervisor. A grievance shall be filed within 60 days 6-months after the discovery of the incident, occurrence, or problem which gives rise to the grievance or--within--6--months after--the--receipt--of--an--unsuccessful--attempt--to--resolve--the--issue. However, if a committed person can demonstrate that a grievance was not timely filed for good cause, the grievance shall be considered. Complaints or problems regarding the revocation of release status, clemency, or orders regarding the length of sentence or decisions that have been rendered by the Director are not reviewable under this procedure.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 2001)

## Section 504.930 Review of Grievances

- a) The Parole Supervisor shall promptly submit a copy of any grievance alleging discrimination based on disability to the facility ADA Coordinator. The facility ADA Coordinator shall conduct such investigation as deemed appropriate and make written recommendations to the Parole Supervisor for resolution of the grievance.
- b) The Parole Supervisor shall interview the releasee and shall evaluate and respond to the grievance in writing within 2 months, where reasonably feasible under the circumstances 30--days--after--receipt, whenever--possible. Copies of the grievance and response shall be retained in the releasee's case file.

(Source: Amended at 25 Ill. Reg. 10775, effective SEP 1 2001)

## Section 504.940 Appeals

- a) The releasee may, if not satisfied with the results of the grievance, submit a written appeal within 30 days after the date of the decision of receipt to:

Director  
Department of Corrections  
1301 Concordia Court, P.O. Box 19277  
Springfield, Illinois 62794-9277

- b) The Director shall, within--30--days--whenever--possible, review the grievance and submit a written response to the releasee within 6 months after receipt of the appealed grievance, where reasonably



## DEPARTMENT OF CORRECTIONS

## NOTICE OF ADOPTED AMENDMENTS

feasible under the circumstances.

(Source: Amended at 25 Ill. Reg. 10775<sup>1</sup>, effective

\_\_\_\_\_)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Health Facilities Planning Procedural Rules

2) Code Citation: 77 Ill. Adm. Code 1130

3) Section Numbers: Adopted Action:  
1130.410 Amendment  
1130.539 New Section  
1130.560 Amendment  
1130.570 Amendment

4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]

5) Effective Date of Amendments: August 24, 2001

6) Do these amendments contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: August 24, 2001; 25 Ill. Reg. 2492

10) Has JCAR issued a Statement of Objections to these amendments? No

11) Differences between proposal and final version:

In Section 1130.539(a)(9), delete the "and" after the semicolon.

In Section 1130.539(a)(10), change the period to "and".

In Section 1130.529(a)(11), changed "it" to "the applicant" and changed "contract" to "contract".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will these amendments replace emergency amendments currently in effect? No

14) Are there any amendments pending on this Part? Yes

Section Numbers	Adopted Action	Illinois Register Citation
-----------------	----------------	----------------------------

1130.140	Amendment	24 Ill. Reg. 14880, October 13, 2000
1130.210	Amendment	24 Ill. Reg. 14880, October 13, 2000
1130.310	Amendment	24 Ill. Reg. 14880, October 13, 2000
1130.620	Amendment	24 Ill. Reg. 14880, October 13, 2000

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

1130.630 Amendment 24 Ill. Reg. 14880, October 13, 2000  
 1130.640 Amendment 24 Ill. Reg. 14880, October 13, 2000  
 1130.910 New Section 24 Ill. Reg. 13783, September 15, 2000  
 APPENDIX A Amendment 24 Ill. Reg. 14880, October 13, 2000

- 15) Summary and Purpose of Amendments: Changes are being adopted to revise the State Board's rules regarding bed related review criteria and to revise the high occupancy variance under the Medical/Surgical, Obstetric, Pediatric Intensive Care review criteria. These changes will assist health care providers who are experiencing high occupancy at their facilities. Providers who are experiencing high occupancy will be able to place additional beds into service by documenting projected population changes within their service area. Change are also being made to the State Board's review criteria regarding Positron Emission Tomographic scanning. These amendments will: 1) make the review of these projects non-substantive, 2) designate planning areas; 3) establish a target utilization; 4) provide guidelines on medical staffing requirements; and 5) furnish assurances for project usage.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Donald Jones  
 Health Facilities Planning Board  
 525 West Jefferson, 2nd Floor  
 Springfield, Illinois 62761  
 217-782-3516  
 217-785-4308  
 Telephone: 800-547-0466  
 Fax: (for hearing impaired only)  
 E-mail: djones@idph.state.il.us

The full text of the adopted amendments begins on the next page:

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
 CHAPTER II: HEALTH FACILITIES  
 PLANNING BOARD  
 SUBCHAPTER b: OTHER BOARD RULES

## PART 1130

## HEALTH FACILITIES PLANNING PROCEDURAL RULES

## SUBPART A: AUTHORITY, PURPOSE AND DEFINITIONS

Section	Statutory Authority/Applicability
1130.110	Public Hearings
1130.120	Purpose
1130.130	Definitions
1130.140	Incorporated Materials
1130.150	

## SUBPART B: WHO IS SUBJECT TO THE HEALTH FACILITIES PLANNING ACT

Section	Persons Subject to the Act
1130.210	Necessary Parties to the Application for Permit or Exemption
1130.220	

## SUBPART C: TRANSACTIONS SUBJECT TO REVIEW

Section	Transactions Subject to Review
1130.310	

## SUBPART D: TRANSACTIONS WHICH ARE EXEMPT FROM REVIEW

Section	Transactions Which Are Exempt from Review
1130.410	

## SUBPART E: PROCEDURAL REQUIREMENTS FOR EXEMPTIONS

Section	Requirements for Exemptions Involving the Acquisition of Major Medical Equipment
1130.510	Requirements for Exemptions Involving the Change in Ownership of a Health Care Facility
1130.520	Requirements for Exemptions Involving Health Maintenance Organizations (Repealed)
1130.530	Requirements for Exemptions Involving the Establishment of Positron Emission Tomography (P.E.T.) Service
1130.539	Requirements for Exemptions Involving Discontinuation
1130.540	Requirements for Exemptions for Combined Facility Licensure
1130.541	Requirements for Exemptions for Temporary Use of Beds for Demonstration Programs
1130.542	

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

1130.543 Requirements for Exemption for Equipment to be Acquired By or on Behalf of a Health Care Facility  
 1130.544 Requirements for Exemption for the Addition of Dialysis Stations  
 1130.550 Agency Processing of an Application for Exemption  
 1130.560 State Board Action  
 1130.570 Validity of an Exemption

## SUBPART F: PROCEDURAL REQUIREMENTS FOR THE REVIEW AND PROCESSING OF APPLICATIONS FOR PERMIT

Section  
 1130.610 Duration of the Review Period and Time Frames  
 1130.620 Consultation, Classification, Completeness Review, and Review Procedures  
 1130.630 Agency Actions During the Review Period  
 1130.640 Extension of the Review Period Prior to Initial State Board Action  
 1130.650 Modification of an Application  
 1130.660 Approval of an Application  
 1130.670 Notice of Intent-to-Deny an Application  
 1130.680 Denial of an Application

## SUBPART G: PERMIT VALIDITY, REPORTING REQUIREMENTS AND REVOCATION

Section  
 1130.710 Validity of Permits  
 1130.720 Obligation  
 1130.730 Extension of the Obligation Period  
 1130.740 Renewal of a Permit  
 1130.750 Alteration of a Project for which a Permit Has Been Issued  
 1130.760 Annual Progress Reports  
 1130.770 Project Completion, Final Realized Costs and Cost Overruns  
 1130.780 Revocation of a Permit  
 1130.790 Penalties, Fines and Sanctions Mandated in the Illinois Health Facilities Planning Act for Non-compliance with the Act and the State Board's Rules

## SUBPART H: DECLARATORY RULINGS

Section  
 1130.810 Declaratory Rulings  
 APPENDIX A Annual Inflation Adjustments to Review Thresholds  
 AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Adopted at 14 Ill. Reg. 7183, effective May 1, 1990; emergency amendment at 15 Ill. Reg. 4787, effective March 18, 1991, for a maximum of 150

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

days; amended at 15 Ill. Reg. 9731, effective June 17, 1991; emergency amendments at 16 Ill. Reg. 13153, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 17 Ill. Reg. 4446, effective March 24, 1993; amended at 17 Ill. Reg. 5882, effective March 26, 1993; amended at 19 Ill. Reg. 2972, effective March 1, 1995; expedited correction at 21 Ill. Reg. 3753, effective March 1, 1995; recodified at 20 Ill. Reg. 2597; emergency amendment at 21 Ill. Reg. 12671, effective September 2, 1997, for a maximum of 150 days; emergency expired January 30, 1998; amended at 23 Ill. Reg. 2911, effective March 15, 1999; emergency amendment at 23 Ill. Reg. 3835, effective March 15, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 7752, effective July 9, 1999; amended at 24 Ill. Reg. 6013, effective April 7, 2000; amended at 25 Ill. Reg. 10786, effective April 7, 2000.

## SUBPART D: TRANSACTIONS WHICH ARE EXEMPT FROM REVIEW

## Section 1130.410 Transactions Which Are Exempt from Review

The following proposed transactions are not subject to review if an exemption is granted by the State Board:

- a) the acquisition of major medical equipment which will not be owned by, operated in behalf of, or located in a health care facility or be used to provide services to an inpatient of a health care facility.
- b) the change of ownership of an existing health care facility.
- c) the discontinuation of an existing health care facility or of a category of service when that discontinuation is the result of:
  - 1) revocation of or denial of license renewal by a State or local regulatory agency;
  - 2) for facilities not subject to licensure, the loss of certification;
  - 3) discontinuation action taken by the State Board;
  - 4) the voluntary surrender of a suspended license.
- d) the combination of two or more existing health care facilities into a single licensed health care facility, when:
  - 1) the existing facilities are located on the same site or on sites adjacent to one another;
  - 2) the licensed person for the existing facilities is the same;
  - 3) the combination is for the sole purpose of operating the existing facilities under a single license;
  - 4) the combination does not involve any cost, any change in scope of services provided, or any change in bed capacity.
- e) the temporary use of beds within existing health care facilities for purposes other than categories of service as defined in 77 Ill. Adm. Code 1100, provided the following are met:
  - 1) the beds will be utilized to provide services as part of a demonstration program authorized by State or federal law, such as, but not limited to, the supportive living facility demonstration project established under Section 5-5.01a of the



## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- Illinois Public Aid Code; and
- 2) the beds will continue to be inventoried according to their presently approved use; and
  - 3) the temporary use of such beds shall cease upon withdrawal from or completion of the demonstration program; and
  - 4) that if such beds are to be permanently used for purposes other than those inventoried, a permit will be obtained from the State Board; and
  - 5) that the temporary use of such beds will not be for demonstration models established pursuant to the Alternative Health Care Delivery Act [210 ILCS 31].
  - f) the proposed acquisition or replacement of equipment by or on behalf of a health care facility that does not substantially change the bed count or the scope or functional operation of a health care facility and that does not exceed the lesser of \$4 million or 10% of the facility's operating revenues derived from patient/resident care (based upon the latest available audited financial statements of the facility or of the person who controls the facility).
  - g) a proposed project for the addition of dialysis stations to existing facilities located in planning areas where the Inventory indicates a need for additional stations provided that the number of stations to be added does not exceed the planning area's need for additional stations as calculated in the Inventory and also provided that the number of stations to be added does not exceed the lesser of 10 stations or 50% of the facility's certified station capacity.
  - h) proposed projects or transactions (such as name changes or corporate restructuring) that the State Board has determined pursuant to Section 1130.810 do not warrant review.
  - i) proposed projects for the establishment of the Positron Emission Tomography (P.E.T.) service at health care facilities.

(Source: Amended at 25 Ill. Reg. 10786, effective AUG 24, 1980)

## SUBPART E: PROCEDURAL REQUIREMENTS FOR EXEMPTIONS

## Section 1130.539 Requirements for Exemptions Involving the Establishment of Positron Emission Tomography (P.E.T.) Service

A person proposing a project to establish the Positron Emission Tomography (P.E.T.) category of service (for, by, or on behalf of a health care facility) and who requests an exemption from the requirements of obtaining a permit must submit an application for exemption to the State Board accompanied by the required application processing fee. Through this exemption, the establishment of this service cannot exceed the planning area's need for additional P.E.T. machines as calculated in the Inventory (77 Ill. Adm. Code 1100.700(b) and 1110.2130(c)). Once the calculated need in a given planning area is met, no additional exemptions for this service will be issued in that planning area.

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

After the need has been met for a planning area, persons who wish to provide this service in that planning area will need to apply to the State Board for a CON under the applicable rules at 77 Ill. Adm. Code 1100.700 and 1110.2130. The application for exemption shall be subject to review and action by the State Board pursuant to Section 1130.560.

## a) Application for Exemption Information

The application for exemption shall contain the following information:

- 1) the name and address of the person proposing the project;
- 2) the name and location of the facility where the P.E.T. service will be established;
- 3) a description of the equipment being acquired, the costs associated with the establishment of the equipment, and the sources and uses of funds;
- 4) the anticipated project schedule, including the anticipated date of project obligation and project completion;
- 5) the method of financing the acquisition;
- 6) documentation that the facility proposing to establish the P.E.T. service will perform at or above the target utilization as described at 77 Ill. Adm. Code 1100.700(b);
- 7) a certification that a final cost report will be submitted to the Agency no later than 60 days following the project completion date;
- 8) proof of publication of a legal notice in a newspaper of general circulation in the community in which the facility is located;
- 9) certification that the project has not yet been entered into or executed;
- 10) certification that the facility proposing to provide the P.E.T. service has a medical director who is a board certified physician by the American College of Radiology or the American College of Nuclear Medicine and has demonstrated expertise in conducting and interpreting P.E.T. scans. A copy of the physician's certification from one of the listed accreditation bodies will constitute sufficient documentation; and
- 11) that the applicant has secured (through a proposed contract or letter of commitment) the availability of the isotope from a provider. The documentation must demonstrate that the provider has the capability to furnish the isotope and that furnishing the isotope will not adversely impact its operations. Additionally, the documentation submitted must demonstrate that the availability to provide the isotope is contingent upon the Health Facilities Planning Board approving the proposed project.

BOARD NOTE: Certification of compliance with the exemption information requirements of this Section must be in the form of a notarized statement signed by two authorized representatives (in the case of a corporation, one must be a member of the board of directors) of the applicant entity.

## b) Legal Notice Requirements

Any person requesting an exemption for the proposed establishment of

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

P.E.T. service must publish a legal notice in a newspaper of general circulation (professional and trade association publications that are intended to serve a defined population will not be considered a newspaper of general circulation) in the community in which the facility is located that provides the following:

- 1) the name and address of the facility for which the exemption is sought;
- 2) the proposed cost of the project;
- 3) a name, title, address and phone number of an individual from whom interested parties may obtain information on the proposed transaction.

## c) Application Processing Fee

The application processing fee shall be the greater of \$1,000 or 1 percent of the total estimated transaction or project cost.

## d) Assurances -- Review Criteria

The applicant must provide the following assurances that will be binding upon the exemption holder or upon subsequent owners/operators of the applicant's facility:

- 1) that the service will cease operation in case of the absence of a medical director and will not resume until a medical director who meets the medical staffing criterion of 77 Ill. Adm. Code 110.2130(d) is attained; and
- 2) that the P.E.T. service will be made available to patients regardless of source of payment, including patients that are Medicare or Medicaid or free care.

## e) Data Requirements

Once an exemption application is approved, the exemption holder will provide the State Board with the following information for evaluative purposes:

- 1) number of P.E.T. scans performed;
- 2) number of patients that received P.E.T. scans;
- 3) number of physicians who referred patients for a P.E.T. scan;
- 4) number of physicians who performed P.E.T. scans;
- 5) diagnosis of patients receiving P.E.T. scans;
- 6) patients' payor source for the P.E.T. scan (e.g., self-pay, insurance, Medicare, Medicaid, etc.).

The requested information shall be provided annually as part of the facility's data requirements as stipulated at 77 Ill. Adm. Code 1100.70.

(Source: Added at 25 Ill. Reg. 107863, effective 4/1/83)

## Section 1130.560 State Board Action

- a) The approval of an application for exemption requiring action by the State Board requires eight affirmative votes.
- b) Exemption applications for the acquisition of major medical equipment,

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

the acquisition of equipment by or on behalf of a health care facility, and the addition of dialysis stations to an existing facility, and the establishment of the Positron Emission Tomography (P.E.T.) service require review and action by the State Board. The Chairman, acting on behalf of the State Board, shall review all other applications for exemption and approve, deny, or refer the applications to the State Board for review and action.

- c) The State Board shall evaluate each application for exemption for acquisition of major medical equipment, for the acquisition of equipment by or on behalf of a health care facility, for the addition of dialysis stations to an existing facility, for the establishment of the Positron Emission Tomography (P.E.T.) service, and any application for exemption referred by the Chairman and either issue an exemption or advise the applicant in writing that the application is denied and is not in compliance with exemption requirements. The State Board shall approve all applications for exemption if the applicable conditions of this Subpart are met. Exemptions will not be issued for projects that have failed to meet the applicable requirements of this Subpart. An exemption for a change of ownership shall not be granted for a project to establish a health care facility which has received a permit but which has not been completed.

(Source: Amended at 25 Ill. Reg. 107863, effective 4/1/83)

## Section 1130.570 Validity of an Exemption

- a) Approval to undertake a transaction that is exempt from review shall be valid for 12 months from the date the exemption application was approved. An exemption transaction for which the exemption approval was issued must be completed or obligated within this 12-month period. The approval for an exempted transaction that is not obligated or completed within this 12-month period will expire on the one year anniversary date after the exemption application's approval. The exemption holder must provide documentation to the Executive Secretary of completion or obligation of the transaction no later than 10 business days from the exemption approval expiration date. Documentation of obligation or completion shall consist of the following as applicable:

- 1) for change of ownership, the effective date that the transaction was completed, by providing evidence of the date of issuance of a new license or certification (if licensing is not applicable), or evidence of the effective date of a stock transfer, or evidence of the effective date of a majority change in voting membership or sponsorship of a not-for-profit corporation, or evidence of the effective date of a transfer of assets, or evidence of the effective date of a merger or consolidation, or evidence of the date of any other means of completion;



## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 2) for major medical equipment, the effective date that the equipment became operational;
- 3) for combined facility licensing, the date of the issuance of a new license;
- 4) for demonstration programs, the date of approval to participate in the demonstration program;
- 5) for acquisition of equipment by or on behalf of a health care facility, the date the project was obligated;
- 6) for the addition of dialysis stations to existing facilities, the date the project was obligated;
- 7) for the establishment of the Positron Emission Tomography (P.E.T.) service, the date the project was obligated.

AGENCY NOTE: Failure to provide the required notification of obligation or completion to the Executive Secretary no later than 10 business days following the exemption expiration date shall subject the exemption holder to the sanctions provided by the Act.

- b) An exemption for a change of ownership of a health care facility shall be invalid if the health care facility ceases to be an existing health care facility as defined in Section 1130.140.
- c) Failure to comply with any conditions and/or certifications required for an exemption shall constitute an unauthorized modification to the exemption and shall subject the person to the penalties provided by the Act.
- d) Any person failing to obtain an exemption or permit when required shall be subject to the sanctions provided by the Act.
- e) An exemption is not transferable or assignable and cannot be bought or sold on its own or as part of any other transaction.

AGENCY NOTE: See Section 1130.520 regarding changes of ownership for facilities with outstanding permits.

(Source: Amended at 25 Ill. Reg. 10786-, effective 11/1/84)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Narrative and Planning Policies
- 2) Code Citation: 77 Ill. Adm. Code 1100
- 3) Section Numbers: Adopted Action:  
1100.220 Amendment  
1100.700 Amendment
- 4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]
- 5) Effective Date of Rulemaking: August 24, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this rulemaking contain incorporations by reference: No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal(s) Published in Illinois Register: 24 Ill. Reg. 18464 and 25 Ill Reg. 2503
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: In Section 1100.700 under "BOARD NOTE", add a comma after "(C)(9)".  
In Section 1100.700 under "BOARD NOTE", change "HSAs" to "HSA's".  
In Section 1100.700 under "BOARD NOTE", delete the "th" after "2/5".  
In Section 1100.700 under "BOARD NOTE", delete the "th" after "3/5".
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this rulemaking replace an emergency rule currently in effect? No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Number</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
1100.70	Amendment	24 Ill. Reg. 14907, October 13, 2000

15) Summary and Purpose of Rulemaking: Changes are being adopted to revise the State Board's rules regarding the definition of "patient days" and to establish a definition for "observation days". These changes will



HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

accommodate health care providers who are experiencing high occupancy at their facilities. Facilities who are experiencing high occupancies will now be able to place additional beds into service by documenting projected population changes within their respective service areas. Additionally, the State Board's planning policies on Positron Emission Tomographic scanning are being revised to establish planning areas, need determination and a target utilization.

16) Information and questions regarding these adopted amendments shall be directed to:

Donald Jones  
Health Facilities Planning Board  
525 West Jefferson, 2nd Floor  
Springfield, Illinois 62761  
217/782-3516  
217/785-4308  
TTY (for hearing impaired only): 800-547-0466  
E-mail: [djones@idph.state.il.us](mailto:djones@idph.state.il.us)

The full text of the adopted amendments begins on the next page:

HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER II: HEALTH FACILITIES  
PLANNING BOARD  
SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

PART 1100  
NARRATIVE AND PLANNING POLICIES

SUBPART A: GENERAL NARRATIVE

Section	
1100.10	Introduction
1100.20	Authority
1100.30	Purpose
1100.40	Health Maintenance Organizations (Repealed)
1100.50	Subchapter Organization
1100.60	Mandatory Reporting of Data
1100.70	Data Appendices
1100.80	Institutional Master Plan Hospitals (Repealed)
1100.90	Public Hearings

SUBPART B: GENERAL DEFINITIONS

Section	
1100.210	Introduction
1100.220	Definitions

SUBPART C: PLANNING POLICIES

Section	
1100.310	Need Assessment
1100.320	Staffing
1100.330	Professional Education
1100.340	Public Testimony
1100.350	Multi-Institutional Systems
1100.360	Modern Facilities
1100.370	Occupancy-Utilization Standards
1100.380	Systems Planning
1100.390	Quality
1100.400	Location
1100.410	Needed Facilities
1100.420	Discontinuation
1100.430	Coordination with Other State Agencies

SUBPART D: NEED FORMULAS/UTILIZATION TARGETS

Section	
1100.510	Introduction, Formula Components and Planning Area Development

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

1100.520	Policies
1100.530	Medical-Surgical/Pediatric Categories of Service
1100.540	Obstetric Category of Service
1100.550	Intensive Care Category of Service
1100.560	Comprehensive Physical Rehabilitation Category of Service
1100.570	Acute Mental Illness Category of Service
1100.580	Substance Abuse/Addiction Treatment Category of Service (Repealed)
1100.590	Neonatal Intensive Care Category of Service
1100.600	Burn Treatment Category of Service
1100.610	Therapeutic Radiology Equipment
1100.620	Open Heart Surgery Category of Service
1100.630	Cardiac Catheterization Services
1100.640	Chronic Renal Dialysis Category of Service
1100.650	Non-Hospital Based Ambulatory Surgery
1100.660	Computer Systems (Repealed)
1100.670	General Long-Term Care-Nursing Care Category of Service
1100.680	General Long-Term Care-Sheltered Care Category of Service
1100.690	Specialized Long-Term Care Categories of Service
1100.700	Intraoperative Magnetic Resonance Imaging Category of Service
1100.710	High Linear Energy Transfer (L.E.T.)
1100.720	Positron Emission Tomographic Scanning (P.E.T.)
1100.730	Extracorporeal Shock Wave Lithotripsy (Repealed)
1100.740	Selected Organ Transplantation
1100.750	Kidney Transplantation
1100.760	Subacute Care Hospital Model
1100.770	Postsurgical Recovery Care Center Alternative Health Care Model
	Children's Respite Care Center Alternative Health Care Model
	Community-Based Residential Rehabilitation Center Alternative Health Care Model

## APPENDIX A

Applicable Codes and Standards Utilized in 77 Ill. Adm. Code: Chapter II, Subchapter a

AUTHORITY: Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 15476; amended at 9 Ill. Reg. 3344, effective March 6, 1985; amended at 11 Ill. Reg. 7311, effective April 1, 1987; amended at 12 Ill. Reg. 16079, effective September 21, 1988; amended at 13 Ill. Reg. 16055, effective September 29, 1989; amended at 16 Ill. Reg. 16074, effective October 2, 1992; amended at 18

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Ill. Reg. 2986, effective February 10, 1994; amended at 18 Ill. Reg. 8448, effective July 1, 1994; emergency amendment at 19 Ill. Reg. 1941, effective January 31, 1995, for a maximum of 150 days; amended at 19 Ill. Reg. 2985, effective March 1, 1995; amended at 19 Ill. Reg. 10143, effective June 30, 1995; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2594; amended at 20 Ill. Reg. 14778, effective November 15, 1996; amended at 21 Ill. Reg. 6220, effective May 30, 1997; expedited correction at 21 Ill. Reg. 17201, effective May 30, 1997; amended at 23 Ill. Reg. 2960, effective March 15, 1999; amended at 24 Ill. Reg. 6070, effective April 7, 2000; amended at 25 Ill. Reg. 10796, effective May 1, 2001.

## SUBPART B: GENERAL DEFINITIONS

## Section 1100.220 Definitions

"Act" means the Illinois Health Facilities Planning Act [20 ILCS 3960].

"Admissions" means the number of patients accepted for inpatient service during a 12-month period; the newborn are not included.

"Applicable Codes and/or Current Recognized Standards" means the current official codes of governmental bodies applicable under law or regulation to Illinois health facilities and/or standards of health facility design, construction and equipment promulgated on a regular or permanent basis by an authority, public or private. A listing of the applicable codes utilized in the application review process may be found in Appendix A of this Part.

"Average Daily Census (ADC)" means over a 12-month period the average number of inpatients receiving service on any given day.

"Average Length of Stay (ALOS)" means over a 12-month period the average duration of inpatient stay expressed in days as determined by dividing total inpatient days by total admissions.

"Bed Capacity or Existing Bed Capacity" means the number of beds recognized for planning purposes at a facility as determined by the Illinois Department of Public Health.

The bed capacity which is utilized for each category of service identified in the Bed Need Determination Section reflects one of the following:

Measured or Surveyed Bed Capacity -- the number of beds by category of service which could be operated based on the amount of clear and usable floor area allowing:

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

100 square feet per bed in single-occupancy rooms.

80 square feet per bed in multi-occupancy rooms.

40 square feet per bassinets in pediatric nurseries.

**Functional Bed Capacity** -- the number of beds by category of service the facility considers appropriate to place in patient rooms taking into account patient care requirements and the ability to perform the regular functions of patient care required for patients for the particular category of service involved.

**Licensed Bed Capacity** -- the number of beds by category of service recognized and licensed by the Illinois Department of Public Health. (Currently applies only to Long-Term Care Facilities.)

**"Category of Service"** means a grouping by generic class of various types or levels of support functions, equipment, care or treatment provided to patient/residents. Examples include but are not limited to medical-surgical, pediatrics, therapeutic radiology, etc. A category of service may include subcategories or levels of care which identify a particular degree or type of care within the category of service.

**"Executive Secretary or Secretary"** means the chief executive officer of the State Board, responsible to the Chairman and, through the Chairman, responsible to the State Board for the execution of its policies and procedures.

**"Health Service Area (HSA)"** means the following geographic areas:

HSA I - Illinois Counties of Boone, Carroll, DeKalb, Jo Daviess, Lee, Ogle, Stephenson, Whiteside, and Winnebago

HSA II - Illinois Counties of Bureau, Fulton, Henderson, Knox, LaSalle, Marshall, McDonough, Peoria, Putnam, Stark, Tazewell, Warren, and Woodford

HSA III - Illinois Counties of Adams, Brown, Calhoun, Cass, Christian, Greene, Hancock, Jersey, Logan, Macoupin, Mason, Menard, Montgomery, Morgan, Pike, Sangamon, Schuyler, and Scott

HSA IV - Illinois Counties of Champaign, Clark, Coles, Cumberland, DeWitt, Douglas, Edgar, Ford, Iroquois, Livingston, Macon, McLean, Moultrie, Piatt, Shelby, and Vermillion

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

HSA V - Illinois Counties of Alexander, Bond, Clay, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Marion, Massac, Perry, Pope, Pulaski, Randolph, Richland, Saline, Union, Wabash, Washington, Wayne, White, and Williamson

HSA VI - City of Chicago

HSA VII - DuPage County and Suburban Cook County

HSA VIII - Illinois Counties of Kane, Lake, and McHenry

HSA IX - Illinois Counties of Grundy, Kankakee, Kendall, and Will

HSA X - Illinois Counties of Henry, Mercer, and Rock Island

HSA XI - Illinois Counties of Clinton, Madison, Monroe, and St. Clair

**"Hospital"** means a facility, institution, place or building licensed pursuant to or operated in accordance with the Hospital Licensing Act [210 ILCS 45] or a State-operated facility that is utilized for the prevention, diagnosis and treatment of physical and mental illness. For purposes of this Subchapter, two basic types of hospitals are recognized:

**General Hospital** -- a facility which offers an integrated variety of categories of service and which offers and performs scheduled surgical procedures on an inpatient basis.

**Special or Specialized Hospital** -- a facility which offers, primarily, a special or particular category of service.

**"Illinois Department of Public Health"** or **"Agency"** or **"IDPH"** means the *Department of Public Health of the State of Illinois*. [20 ILCS 3960/3]

**"Modernization"** means modification of an existing health care facility by means of building, alteration, reconstruction, remodeling, replacement, the erection of new buildings, or the acquisition, alteration or replacement of equipment. Modification does not include a substantial change in either the bed count or scope of the facility.

**"Observation Days"** means the number of days of service provided to outpatients for the purpose of determining whether a patient requires admission as an inpatient or other treatment. The observation period shall not exceed 48 hours.

**"Occupancy Rate"** means a measure of inpatient health facility use,



## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

determined by dividing average daily census by the calculated capacity. It measures the average percentage of a facility's beds occupied and may be institution-wide or specific for one department or service.

"Occupancy Target" means a minimum utilization level established by IDPH for a facility or service reflecting adequate access as well as operational efficiency.

"Patient Days" means the total number of days of service provided to inpatients of a facility over a 12-month period. This figure includes observation days if the observation patient occupies a bed that is included in the State Agency's Inventory of Health Care Facilities and Services as described in Section 1100.70.

"Population or Population Projections" means the latest estimates available as determined by IDPH.

"Planning Area" means a defined geographic area within the State established by the State Board as a basis for the collection, organization, and analysis of information to determine health care resources and needs and to serve as a basis for planning.

"Site" means the location of an existing or proposed facility. An existing facility site is determined by street address. In a proposed facility the legal property description or the street address can be used to identify the site.

"State Board" means the Health Facilities Planning Board established by the Act. [20 ILCS 3960/3]

"Unit" means the grouping of beds to provide a category of service. Units are physically identifiable areas which are staffed to provide all care required for particular service.

"Use Rate" means the ratio of inpatient days per 1,000 population over a 12-month period (Inpatient Days/Population in Thousands = Use Rate).

"Use Rate or Utilization Maximum" means a ceiling placed on an area's use or utilization rate in order to reduce the projected need for beds or services. Use rate maximums are designed to prevent the overestimation of needed beds in formulas which utilize historical demand. Maximums are used in planning areas where historical demand is inflated due to an immigration of patients from other planning areas.

"Use Rate or Utilization Minimum" means a lower limit placed on an area's use of utilization rate in order to inflate the projected need for beds or services. Use rate minimums are designed to promote the

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

development of beds in areas where historical utilization is too low to create a formula bed need. Low utilization is caused by a lack of services in the area or by an out migration of area residents to other areas for care.

"Utilization" means patterns or rates of use of a single service or type of service, within a given facility or also in combinations of facilities. Use is expressed in rates per unit of population at risk for a given period.

"Variance" means an exception to computed need based upon criteria or conditions for particular categories of service.

(Source: Amended at 25 Ill. Reg. 10796, effective  
Aug. 24, 2001)

## SUBPART D: NEED FORMULAS/UTILIZATION TARGETS

## Section 1100.700 Positron Emission Tomographic Scanning (P.E.T.)

- a) Planning Area: Health Service Areas. ~~The State of Illinois.~~
- b) Target Utilization: A minimum of 1,000 scans annually per P.E.T. machine within two years after initiation. The calculation of 1,000 scans will be based upon data submitted by the applicant demonstrating the machine's utilization by all referral sources.
- c) Need Determination Assessments: The need for a P.E.T. machine shall be determined by using the adjusted Illinois cancer incidence rate and applying that rate to each HSA. This is determined as follows:
  - 1) determine the population in each HSA;
  - 2) divide the HSA population from step one by 100,000;
  - 3) determine the total number of diagnosed cancer cases in Illinois;
  - 4) divide the number in subsection (c)(3) by 2 (it is assumed that 50% of patients diagnosed with cancer will not benefit from a P.E.T. scan);
  - 5) divide the number from subsection (c)(4) by the number in subsection (c)(2) to determine the adjusted statewide cancer incidence rate per 100,000 population;
  - 6) multiply the total number in subsection (c)(5) by the number in subsection (c)(2) to determine the estimated number of cancer cases diagnosed in the HSA;
  - 7) multiply the number in subsection (c)(6) by 1.5 to accommodate non-oncology patients;
  - 8) divide the number in subsection (c)(7) by 1,000 (target utilization) to determine the number of P.E.T. machines needed in each HSA;
  - 9) subtract existing P.E.T. machines in operation to determine additional machines needed.

~~One piece of equipment for each medical school or the colleges of~~

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

**Medicine-within-the-State.**

**BOARD NOTE:** In relation to subsection (c)(9), if a mobile P.E.T. machine is utilized in more than one HSA, it shall be counted against each HSA's calculated need based upon its actual utilization in that HSA. For example, if a mobile P.E.T. machine is utilized in HSA 3 two days per week and HSA 4 three days per week then there would exist 2/5 of a P.E.T. machine in HSA 3 and 3/5 of a P.E.T. machine in HSA 4.

(Source: Amended at 25 Ill. Reg. 107962 effective  
4th 2/99)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Processing, Classification Policies and Review Criteria

2) Code Citation: 77 Ill. Adm. Code 1110

3) Section Numbers: Adopted Action:

1110.40 Amendment

1110.320 Amendment

1110.530 Amendment

1110.2130 Amendment

4) Statutory Authority: Illinois Health Facilities Planning Act [20 ILCS 3960]

5) Effective Date of Amendments: August 24, 2001

6) Do these amendments contain an automatic repeal date? No

7) Do these amendments contain incorporations by reference? No

8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal(s) Published in Illinois Register: 24 Ill. Reg. 18474 and 25 Ill. Reg. 2509

10) Has JCAR issued a Statement of Objections to these amendments? No

11) Differences between proposal and final version:

In Section 1110.2130(f)(2), delete the period and insert "; and"

In Section 1110.2130(f)(3), change "contact" to "contract".

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes

13) Will these amendments replace an emergency amendment currently in effect?  
No

14) Are there any amendments pending on this Part? Yes

Section Number	Proposed Action	Illinois Register Citation
1110.40	Amendment	24 Ill. Reg. 14918, October 13, 2000
1110.60	Amendment	24 Ill. Reg. 14918, October 13, 2000
1110.230	Amendment	24 Ill. Reg. 14918, October 13, 2000

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

15) Summary and Purpose of Amendments:

Changes are being adopted to revise the State Board's rules regarding bed related review criteria and to revise the high occupancy variance under the Medical/Surgical, Obstetric, Pediatric and Intensive Care review criteria. These changes will assist health care providers who are experiencing high occupancy at their facilities by allowing the placement of additional beds into service. Changes are also being made to the State Board's review criteria regarding Position Emission Tomographic scanning. These amendments will:

- 1) make the review of these projects non-substantive
- 2) designate planning areas;
- 3) establish a target utilization;
- 4) provide guidelines on medical staffing requirements; and
- 5) furnish assurances for project usage.

16) Information and questions regarding these adopted amendments shall be directed to:

Donald Jones  
Health Facilities Planning Board  
525 West Jefferson, 2nd Floor  
Springfield, Illinois 62761  
217/782-3516  
Fax: 217-785-4308  
TTY (for hearing impaired only) 800-547-0466  
E-mail: djones@idph.state.il.us

The full text of the adopted amendments begins on the next page:

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

TITLE 77: PUBLIC HEALTH  
CHAPTER II: HEALTH FACILITIES  
PLANNING BOARD

## SUBCHAPTER a: ILLINOIS HEALTH CARE FACILITIES PLAN

## PART 1110

## PROCESSING, CLASSIFICATION POLICIES AND REVIEW CRITERIA

## SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section	
1110.10	Introduction to Part 1110
1110.20	Projects Required to Obtain a Permit (Repealed)
1110.30	Processing and Reviewing Applications
1110.40	Classification of Projects
1110.50	Recognition of Services Which Existed Prior to Permit Requirements
1110.55	Recognition of Non-Hospital Based Ambulatory Surgery Category of Service
1110.60	Master Design Projects
1110.65	Master Plan or Capital Budget Projects

## SUBPART B: REVIEW CRITERIA--DISCONTINUATION

Section	
1110.110	Introduction
1110.120	Discontinuation--Definition
1110.130	Discontinuation--Review Criteria

## SUBPART C: GENERAL, MASTER DESIGN, AND CHANGES OF OWNERSHIP REVIEW CRITERIA

Section	
1110.210	Introduction
1110.220	Definitions--General Review Criteria
1110.230	General Review Criteria
1110.235	Additional General Review Criteria for Master Design and Related Projects Only
1110.240	Changes of Ownership

## SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS INVOLVING ESTABLISHMENT OF ADDITIONAL BEDS OR SUBSTANTIAL CHANGE IN BED CAPACITY

Section	
1110.310	Introduction
1110.320	Bed Related Review Criteria

## SUBPART E: MODERNIZATION REVIEW CRITERIA



## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Section  
1110.410  
1110.420

Introduction  
Modernization Review Criteria

SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA--  
MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE

Section  
1110.510  
1110.520

Introduction  
Medical/Surgical, Obstetric, Pediatric and Intensive  
Care--Definitions  
Medical/Surgical, Obstetric, Pediatric and Intensive Care--Review  
Criteria

SUBPART G: CATEGORY OF SERVICE REVIEW CRITERIA--  
COMPREHENSIVE PHYSICAL REHABILITATION

Section  
1110.610  
1110.620  
1110.630

Introduction  
Comprehensive Physical Rehabilitation--Definitions  
Comprehensive Physical Rehabilitation--Review Criteria

SUBPART H: CATEGORY OF SERVICE REVIEW CRITERIA--ACUTE  
MENTAL ILLNESS

Section  
1110.710  
1110.720  
1110.730

Introduction  
Acute Mental Illness--Definitions  
Acute Mental Illness--Review Criteria

SUBPART I: CATEGORY OF SERVICE REVIEW CRITERIA--SUBSTANCE ABUSE/ADDICTION  
TREATMENT

Section  
1110.810  
1110.820  
1110.830

Introduction (Repealed)  
Substance Abuse/Addiction Treatment--Definitions (Repealed)  
Substance Abuse/Addiction Treatment--Review Criteria (Repealed)

SUBPART J: CATEGORY OF SERVICE REVIEW CRITERIA--  
NEONATAL INTENSIVE CARE

Section  
1110.910  
1110.920  
1110.930

Introduction  
Neonatal Intensive Care--Definitions  
Neonatal Intensive Care--Review Criteria

SUBPART K: CATEGORY OF SERVICE REVIEW CRITERIA--BURN TREATMENT

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Section  
1110.1010  
1110.1020  
1110.1030

Introduction  
Burn Treatment--Definitions  
Burn Treatment--Review Criteria

SUBPART L: CATEGORY OF SERVICE REVIEW CRITERIA--  
THERAPEUTIC RADIOLOGY

Section  
1110.1110  
1110.1120  
1110.1130

Introduction  
Therapeutic Radiology--Definitions  
Therapeutic Radiology--Review Criteria

SUBPART M: CATEGORY OF SERVICE REVIEW CRITERIA--  
OPEN HEART SURGERY

Section  
1110.1210  
1110.1220  
1110.1230

Introduction  
Open Heart Surgery--Definitions  
Open Heart Surgery--Review Criteria

SUBPART N: CATEGORY OF SERVICE REVIEW CRITERIA--CARDIAC  
CATHETERIZATION

Section  
1110.1310  
1110.1320  
1110.1330

Introduction  
Cardiac Catheterization--Definitions  
Cardiac Catheterization--Review Criteria

SUBPART O: CATEGORY OF SERVICE REVIEW CRITERIA--CHRONIC RENAL DIALYSIS

Section  
1110.1410  
1110.1420  
1110.1430

Introduction  
Chronic Renal Dialysis--Definitions  
Chronic Renal Dialysis--Review Criteria

SUBPART P: CATEGORY OF SERVICE REVIEW CRITERIA--NON-HOSPITAL  
BASED AMBULATORY SURGERY

Section  
1110.1510  
1110.1520  
1110.1530

Introduction  
Non-Hospital Based Ambulatory Surgery--Definitions  
Non-Hospital Based Ambulatory Surgery--Projects Not Subject to This  
Part

1110.1540 Non-Hospital Based Ambulatory Surgery--Review Criteria

SUBPART Q: CATEGORY OF SERVICE REVIEW CRITERIA--COMPUTER SYSTEMS

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Section  
1110.1610 Introduction (Repealed)  
1110.1620 Computer Systems--Definitions (Repealed)  
1110.1630 Computer Systems--Review Criteria (Repealed)

SUBPART R: CATEGORY OF SERVICE REVIEW CRITERIA--GENERAL  
LONG-TERM CARE

Section  
1110.1710 Introduction  
1110.1720 General Long-Term Care--Definitions  
1110.1730 General Long-Term Care--Review Criteria

SUBPART S: CATEGORY OF SERVICE REVIEW CRITERIA--SPECIALIZED  
LONG-TERM CARE

Section  
1110.1810 Introduction  
1110.1820 Specialized Long-Term Care--Definitions  
1110.1830 Specialized Long-Term Care--Review Criteria

SUBPART T: CATEGORY OF SERVICE REVIEW CRITERIA--  
INTRAOPERATIVE MAGNETIC RESONANCE IMAGING

Section  
1110.1910 Introduction  
1110.1920 Intraoperative Magnetic Resonance Imaging--Definitions  
1110.1930 Intraoperative Magnetic Resonance Imaging--Review Criteria

SUBPART U: CATEGORY OF SERVICE REVIEW CRITERIA--HIGH LINEAR  
ENERGY TRANSFER (L.E.T.)

Section  
1110.2010 Introduction  
1110.2020 High Linear Energy Transfer (L.E.T.)--Definitions  
1110.2030 High Linear Energy Transfer (L.E.T.)--Review Criteria

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA--POSITRON  
EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section  
1110.2110 Introduction  
1110.2120 Positron Emission Tomographic Scanning (P.E.T.)--Definitions  
1110.2130 Positron Emission Tomographic Scanning (P.E.T.)--Review Criteria

SUBPART W: CATEGORY OF SERVICE REVIEW CRITERIA--EXTRACORPOREAL  
SHOCK WAVE LITHOTRIPS

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Section  
1110.2210 Introduction (Repealed)  
1110.2220 Extracorporeal Shock Wave Lithotripsy--Definitions (Repealed)  
1110.2230 Extracorporeal Shock Wave Lithotripsy--Review Criteria (Repealed)

SUBPART X: CATEGORY OF SERVICE REVIEW CRITERIA--SELECTED  
ORGAN TRANSPLANTATION

Section  
1110.2310 Introduction  
1110.2320 Selected Organ Transplantation--Definitions  
1110.2330 Selected Organ Transplantation--Review Criteria

SUBPART Y: CATEGORY OF SERVICE REVIEW CRITERIA--KIDNEY TRANSPLANTATION

Section  
1110.2410 Introduction  
1110.2420 Kidney Transplantation--Definitions  
1110.2430 Kidney Transplantation--Review Criteria

SUBPART Z: CATEGORY OF SERVICE REVIEW CRITERIA--SUBACUTE  
CARE HOSPITAL MODEL

Section  
1110.2510 Introduction  
1110.2520 Subacute Care Hospital Model-Definitions  
1110.2530 Subacute Care Hospital Model-Review Criteria  
1110.2540 Subacute Care Hospital Model-State Board Review  
1110.2550 Subacute Care Hospital Model-Project Completion

SUBPART AA: CATEGORY OF SERVICE REVIEW CRITERIA--POSTSURGICAL RECOVERY CARE  
CENTER ALTERNATIVE HEALTH CARE MODEL

Section  
1110.2610 Introduction  
1110.2620 Postsurgical Recovery Care Center Alternative Health Care  
Model-Definitions  
1110.2630 Postsurgical Recovery Care Center Alternative Health Care  
Model-Review Criteria  
1110.2640 Postsurgical Recovery Care Center Alternative Health Care  
Model-State Board Review  
1110.2650 Postsurgical Recovery Care Center Alternative Health Care  
Model-Project Completion

SUBPART AB: CATEGORY OF SERVICE REVIEW CRITERIA -  
CHILDREN'S RESPITE CARE ALTERNATIVE HEALTH CARE MODEL

1110.2710 Introduction

HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

1110.2720	Children's Respite Model - Definitions	Care	Center	Alternative	Health	Care
1110.2730	Children's Respite Model - Review Criteria	Care	Center	Alternative	Health	Care
1110.2740	Children's Respite Model - State Board Review	Care	Center	Alternative	Health	Care
1110.2750	Children's Respite Model - Project Completion	Care	Center	Alternative	Health	Care

SUBPART AC: CATEGORY OF SERVICE REVIEW CRITERIA -- COMMUNITY-BASED

REHABILITATION CENTER ALTERNATIVE HEALTH CARE MODEL						
1110.2810	Introduction	Community-Based	Residential	Rehabilitation	Center	Alternative
1110.2820	Health Care Model - Definitions	Community-Based	Residential	Rehabilitation	Center	Alternative
1110.2830	Health Care Model - Review Criteria	Community-Based	Residential	Rehabilitation	Center	Alternative
1110.2840	Community-Based Health Care Model - State Board Review	Community-Based	Residential	Rehabilitation	Center	Alternative
1110.2850	Community-Based Health Care Model - Project Completion	Community-Based	Residential	Rehabilitation	Center	Alternative
APPENDIX A	Medical Specialty Eligibility/Certification Boards	State and National Norms				
APPENDIX B	Statutory Citations for All State and Federal Laws and Regulations Referenced in Chapter 3	Implementing and authorized by the Illinois Health Facilities Planning Act [20 ILCS 3960].				

SOURCE: Fourth Edition adopted at 3 Ill. Reg. 30, p. 194, effective July 28, 1979; amended at 4 Ill. Reg. 4, p. 129, effective January 11, 1980; amended at 5 Ill. Reg. 4895, effective April 22, 1981; amended at 5 Ill. Reg. 10297, effective September 30, 1981; amended at 6 Ill. Reg. 3079, effective March 8, 1982; emergency amendments at 6 Ill. Reg. 6895, effective May 20, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 11574, effective September 9, 1982; Fifth Edition adopted at 7 Ill. Reg. 5441, effective April 15, 1983; amended at 8 Ill. Reg. 1633, effective January 31, 1984; codified at 8 Ill. Reg. 18498; amended at 9 Ill. Reg. 3734, effective March 6, 1985; amended at 11 Ill. Reg. 7333, effective April 1, 1987; amended at 12 Ill. Reg. 16099, effective September 21, 1988; amended at 13 Ill. Reg. 16078, effective September 29, 1989; emergency amendments at 16 Ill. Reg. 13159, effective August 4, 1992, for a maximum of 150 days; emergency expired January 1, 1993; amended at 16 Ill. Reg. 16108, effective October 2, 1992; amended at 17 Ill. Reg. 4453, effective March 24, 1993; amended at 18 Ill. Reg. 2993, effective February 10, 1994; amended at 18 Ill. Reg. 8455, effective July 1, 1994; amended at 19 Ill. Reg. 2991, effective March 1, 1995; emergency amendment at 19 Ill. Reg. 7981, effective May 31, 1995, for a maximum of 150 days; emergency expired October

HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

27, 1995; emergency amendment at 19 Ill. Reg. 15273, effective October 20, 1995, for a maximum of 150 days; recodified from the Department of Public Health to the Health Facilities Planning Board at 20 Ill. Reg. 2600; amended at 20 Ill. Reg. 4734, effective March 22, 1996; amended at 20 Ill. Reg. 14785, effective November 15, 1996; amended at 23 Ill. Reg. 2987, effective March 15, 1999; amended at 24 Ill. Reg. 6075, effective April 7, 2000; amended at 25 Ill. Reg. 10806, effective August 1, 2001.

SUBPART A: GENERAL APPLICABILITY AND PROJECT CLASSIFICATION

Section 1110.40 Classification of Projects

When an application for permit has been received by the State Board, the Executive Secretary shall classify the project into one of the following classifications:

- a) Emergency Classification
  - 1) Emergency projects are subject to the review process and are those construction or modification projects that affect the inpatient operation of a health care facility and are necessary because there exists one or more of the following conditions:
    - A) An imminent threat to the structural integrity of the building; or
    - B) An imminent threat to the safe operation and functioning of the mechanical, electrical, or comparable systems of the building.

- 2) Since the State Board recognizes that applications for emergency projects must be processed as expeditiously as possible, all applications will be reviewed in accordance with the following review criteria:

- A) the project is indeed an emergency project as defined in subsection (a)(1)(A) or (B) above; and
  - B) failure to proceed immediately with the project would result in closure or impairment of the inpatient operation of the facility; and
  - C) the emergency conditions did not exist longer than 30 days prior to requesting the emergency classification.
- b) Non-Substantive Review Classification. Non-substantive projects are those establishment, construction, modification or equipment projects which consist solely of the characteristics detailed in this subsection. Applications shall be evaluated only against the following applicable review criteria of the Sections or Parts specified.

Applicable Project Type Review Criteria

Establishment of long-term care facilities licensed by the Department of Children and Family Section 1110.230 and Part 1120



## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

Services	
Discontinuation of beds or category of service	Section 1110.130 and Part 1120
Changes of ownership	Sections 1110.230(b), 1110.240, and Part 1120
Long-term care for the Developmentally Disabled Categories of Service	Section 1110.230; Section 1110.320(b); Section 1110.1830; and Part 1120
Acute Care Beds Certified for Extended Care Category of Service as defined by the Health Care Financing Administration (42 CFR 405.471 (1987))	Section 1110.230(a), (c), (e); and Part 1120
Chronic Renal Dialysis Category of Service	Section 1110.230; Part 1110.1430; and Part 1120
Positron Emission Tomographic Scanning Category of Service	Section 1110.230(a), (c), (d) and (e); Section 1110.2130; and Part 1120
Residential units and apartments	Section 1110.230; and Part 1120
Projects intended solely to provide care to patients suffering from Acquired Immunodeficiency Syndrome (AIDS) or related disorders	Section 1110.230; Section 1110.320; Section 1110.420; and Part 1120
Projects to comply with Life Safety Code requirements	Section 1110.420(a) and (b); and Part 1120
Restaurants, cafeterias, snack bars and all other non-patient dining areas	Section 1110.230(c) and (e); Section 1110.420(b); and Part 1120
Administration and volunteer offices	Section 1110.230(c) and (e); and Part 1120
Replacement of diagnostic or therapeutic equipment with comparable equipment to	Section 1110.420(b); and Part 1120

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

be utilized for a similar purpose	Section 1110.230(c), (d) and e); and Part 1120
Medical office buildings, fitness centers, and other non-inpatient space	Section 1110.230(c), (d) and e); and Part 1120
Boiler repair or replacement (does not include boiler plant); bridges, tunnels, walkways, elevators or other structures designed to provide access between or through existing buildings; capitalized projects that are considered basically maintenance, such as carpeting, tile replacement or furniture purchase; chapels; computers; educational facilities, including auditoriums, classrooms, student housing; emergency transportation equipment; gift shops, news stands and other retail space; mechanical systems for heating, ventilation and air conditioning; modernization of structural components (roof replacement, masonry work, etc.); loading docks; parking facilities; telephone systems	Part 1120
Community-Based Residential Rehabilitation Center Alternative Health Care Model	Section 1110.2850
c) Substantive Review Classification. All projects that do not include components specified in subsection (b) shall be subject to review and shall be classified substantive unless they are found to be emergency projects as delineated in subsection (a) above.	
d) Classification of projects with both non-substantive and substantive components. Projects which include both substantive and non-substantive components shall be classified as substantive.	
e) Classification Appeal. Appeal of any classification may be made to the State Board at the next scheduled State Board meeting.	

(Source: Amended at 25 Ill. Reg. 10806, effective 10/1/81)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

**SUBPART D: REVIEW CRITERIA RELATING TO ALL PROJECTS INVOLVING  
ESTABLISHMENT OF ADDITIONAL BEDS OR SUBSTANTIAL CHANGE  
IN BED CAPACITY**

**Section 1110.320 Bed Related Review Criteria**

- a) Establishment of Additional Hospitals--Review Criterion. A proposed general hospital to be located within a Metropolitan Statistical Area (M.S.A.\*) must contain a minimum of 100 MS beds.  
 AGENCY NOTE: \*M.S.A.'s are defined and named in the U.S. Bureau of the Census Budget publication, Metropolitan Statistical Areas: 1984, available from the U.S. Government Printing Office, Washington, D.C. 20402.
- b) Allocation of Additional Beds--Review Criterion. The applicant proposing to establish a category of service must document that access to the service will be improved. Documentation shall consist of at least one of the following:
- 1) the proposed service is not available within the planning area;
  - 2) existing facilities have restricted admission policies resulting in access limitations;
  - 3) existing service providers are experiencing occupancy levels in excess of the category of service target levels;
  - 4) the travel time to existing service providers is excessive (exceeds 45 minutes) for area residents to be served by the project.
- c) Addition of Beds to Existing Facilities--Review Criterion
- 1) The applicant must document that the addition of beds is necessary. Documentation shall consist of evidence that:
    - A) existing inpatient bed services over the latest 12 month period have averaged been-continually-utilized at or above the target occupancy or-higher; or
    - B) when occupancy levels over that period fall below the target occupancy the services affected cannot be converted to provide the needed bed space due to architectural or programmatic considerations.
  - 2) An applicant proposing to add beds while operating an acute care service (for purposes of this subsection, acute care services means: M-S, OB, Pediatrics, ICU, Acute Mental Illness, and Burn services) must document the appropriateness of the length of stay in existing services services. Documentation shall consist of a comparison of patient length of stay with other providers within the planning area. An applicant whose existing services have services has a length of stay longer than that of other area providers must document that the severity or type of illness treated at the applicant facility is greater.

(Source: Amended at 25 Ill. Reg. 10806, effective 10/1/84)

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

**SUBPART F: CATEGORY OF SERVICE REVIEW CRITERIA--  
MEDICAL/SURGICAL, OBSTETRIC, PEDIATRIC AND INTENSIVE CARE**

**Section 1110.530 Medical/Surgical, Obstetric, Pediatric and Intensive Care--Review Criteria**

- a) Unit Size--Review Criterion
- 1) Obstetrics
    - A) The minimum unit size for a new obstetric unit within a Metropolitan Statistical Area is 20 beds.
    - B) The minimum unit size for a new obstetric unit outside a Metropolitan Statistical Area is seven-7 beds.
  - 2) Intensive Care. The minimum unit size for an intensive care unit is 4 four beds.
  - 3) Pediatrics. The minimum size for a pediatric unit within a Metropolitan Statistical Area is 16 sixteen beds.
- b) Variances to Bed Need--Review Criterion. The applicant must document one or more of the following:
- 1) High Occupancy Variance
    - A) The applicant must document that the applicant facility has experienced high occupancy. Documentation shall consist of evidence that the historical average annual occupancy rate has equaled or exceeded the target occupancy for the prior 24-month period in-each-of-the-last-two-years-for-which-data-is-available.
    - B) The applicant must also document that the number of beds proposed will not exceed the number needed to reduce the facility's high occupancy to the target occupancy, or if the number of beds proposed exceeds the number of beds justified by the applicant's historical workload, then projections may be used. Utilization projections must be based upon the following:
      - i) Projections shall be based upon population projections from the U.S. Bureau of the Census;
      - ii) projections shall be for a maximum period of 5 years from the date the application is submitted;
      - iii) projections shall be zip code and age-specific; and
      - iv) projections shall be based upon the applicant's service area as defined by historical patient origin, and shall not include projected changes in market share.
- The projections provided must also demonstrate that the proposed number of beds will not exceed the number of beds needed to meet the target occupancy rate over the next 5 years.
- 2) Medically Underserved Variance
- A) The applicant must document that access to the proposed service is restricted in the planning area as documented by:
    - i) the absence of the service within the planning area;

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- ii) limitations on governmentally funded or charity patients;
- iii) restrictive admission policies of existing providers;
- iv) the area population and existing care system exhibit indicators of median care problems such as an average family income level below the State average poverty level, high infant mortality or designation as a Health Manpower Shortage Area; or
- v) the project will provide service for a portion of the population who must currently travel over 45 minutes to receive service.
- B) Documentation shall consist of location and utilization of other planning area service providers; patient location information and all applicable time-travel studies; a certification of waiting times and scheduling or admission restrictions that exist in area providers; and an assessment of area population characteristics which would indicate an access problem.
- C) The applicant must also document that the number of beds proposed will not exceed the number needed at the target occupancy rate to meet the health care needs of the population identified as having restricted access.

(Source: Amended at 25 Ill. Reg. 10806, effective 3/16/81)

SUBPART V: CATEGORY OF SERVICE REVIEW CRITERIA--POSITRON  
EMISSION TOMOGRAPHIC SCANNING (P.E.T.)

Section 1110.2130 Positron Emission Tomographic Scanning (P.E.T.) -- Review  
Criteria

- a) Projected P.E.T. Volume Initial--Introduction -- Review Criterion
- The applicant must document that the projected number of P.E.T. scans will meet or exceed the target utilization level specified in 77 Ill. Adm. Code 1100.700(b).

Documentation shall consist of the following:

- 1) number of cancer cases diagnosed at the applicant's facility; or  
The--initial--introduction--of--Positron-Emission--Tomographic Scanners--will--allow--the--State--Board--the--opportunity--to--study--data generated--by--the--initial--project--in--order--to--evaluate--the efficacy--of--this--technologically--innovative--equipment--referrals from other sources in the HSA; or the--initial--Health Facilities--Planning--Board--has--determined--that--for--the--period--of study--and--data--collection--one--piece--of--this--equipment--be allocated--for--each--medical--school--of--the--Colleges--of--Medicine within--the--State.

## HEALTH FACILITIES PLANNING BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 3) referrals from physicians in the HSA; or
  - 4) multi-institutional system appropriate referrals.
- b) Appropriate Medical and Related Services--to--be--Provided--Review Criteria
- 1) Training and Medical Education  
Institutions--must--have--on--their--staff--board--certified--physicians who--will--participate--in--the--evaluation--of--P.E.T.--Scanners.
  - 2) Support Services  
Because--P.E.T.--services--should--complement--other--diagnostic modalities--P.E.T.--scanners--shall--be--located--at--facilities offering--a--full--range--of--diagnostic--modalities--including--but--not limited--to--ultrasound--nuclear--medicine--PET--scanning--radiologic--procedures--and--conventional--diagnostic--x-ray--A nuclear--medicine--facility--wishing--to--participate--in--P.E.T.--evaluation--must--be--a--full--service--facility.
  - 3) Board--Certified--Nuclear--Medicine--Physician--and--Radiation Physicist  
A) The--applicant--must--have--on--staff--a--board--certified--or--board eligible--physician--specializing--in--nuclear--medicine--and--a staff--physicist--with--expertise--in--nuclear--medicine--to--assure the--quality--and--safety--of--the--P.E.T.--equipment.  
B) A--staff--radiation--physicist--is--defined--in--the--Rules--of--the State--Board--as--"a--person--who--is--a--graduate--physicist--and is--either--certified--or--eligible--for--certification--by--the American--Board--of--Radiology--or--its--equivalent--or--who--is--a graduate--physicist--with--equivalent--training--and--experienced to--that--degree--required--by--the--American--Board--of--Radiology."
- be) Multi-Institutional Systems -- Review Criterion
- The applicant must document that the proposed project will result in the establishment of a multi-institutional system with regard to the utilization of Positron Emission Tomographic Scanners. Such documentation may include copies of letters or signed agreements with other facilities stating that those facilities will utilize this equipment by the referral of patients.
- c) Unnecessary Duplication of Service -- Review Criterion
- An applicant must document that establishing the P.E.T. category of service will not result in an unnecessary duplication of service within the HSA. Documentation shall include evidence of the following:
- 1) there are no healthcare facilities providing (or approved to provide) the P.E.T. category of service within the HSA; or
  - 2) the proposed project will not reduce utilization below the standard specified at 77 Ill. Adm. Code 1100.700(b) for facilities that have operated at or above the established level for the latest 12 month period (for which data is available); or
  - 3) the impact the proposed project will have on an existing facility (including those approved to provide P.E.T. service that are not in operation) that has not operated at the target utilization



HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

level; or  
4) that existing P.E.T. facilities located in the HSA have restrictive policies or protocols that preclude patients from the applicant's facility from obtaining P.E.T. services.

d) Medical Staffing Decision -- Review Criterion  
The applicant must provide documentation that each facility or site where the P.E.T. service is proposed has a medical director who is a board certified physician by the American College of Radiology or the American College of Nuclear Medicine and has a demonstrated expertise in conducting and interpreting P.E.T. scans. Due to the fact that P.E.T. Scanners are innovative equipment it will be the policy of the State Board that such pieces of equipment be located at an affiliated teaching facility of the State's medical schools in order to evaluate medical efficacy. The applicant must document that the medical school has recommended the institution in which the equipment is to be located. A copy of a letter from the Dean of the appropriate College of Medicine (or his representative) will constitute sufficient documentation.

e) Data Collection -- Review Criteria  
As part of the State Board's evaluation of this service, the applicant must document that it will provide the following information:

- 1) IBPH shall collect data from all available sources for purposes of studying the efficacy of this equipment;
- 2) the applicant must document that it will provide utilization data, clinical data, and reports of clinical efficacy in comparison to other forms of diagnostic modalities as requested by IBPH;

- 1) number of P.E.T. scans performed;
- 2) number of patients that received a P.E.T. scan;
- 3) number of physicians who referred patients for a P.E.T. scan;
- 4) number of physicians who performed P.E.T. scans;
- 5) payor source for the P.E.T. scan (e.g., self-pay, insurance, Medicare, Medicaid, etc.).

The requested information must be provided annually as part of the facility's data requirements as stipulated at 77 Ill. Adm. Code 1100.70. The applicant must also document that it will provide a representative from the institution as a liaison to the State Board for the purposes of data collection. A letter stating that, if Approved, the applicant will participate by providing required data will constitute sufficient documentation.

f) Assurances -- Review Criteria  
The applicant must provide the following assurances that will be binding upon the applicant or upon subsequent owners/operators of the applicant's facility:

- 1) that the service will cease operation in the absence of a medical director and will not resume until a medical director who meets the medical staffing criterion of subsection (d) is attained;
- 2) that the P.E.T. service will be made available to patients

HEALTH FACILITIES PLANNING BOARD

NOTICE OF ADOPTED AMENDMENTS

regardless of source of payment, including patients that are Medicare or Medicaid or free care; and  
3) that it has secured (through a proposed contract or letter of commitment) the availability of the isotope from a provider. The documentation must demonstrate that the provider has the capability to furnish the isotope and that furnishing the isotope will not adversely impact its operations. Additionally, the documentation submitted must demonstrate that the availability to provide the isotope is contingent upon the Health Facilities Planning Board approving the proposed project.

(Source: Amended at 25 Ill. Reg. 10806, effective 10/1/80)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

- 1) Heading of the Part: Food Stamps
- 2) Code Citation: 89 Ill. Adm. Code 121
- 3) Section Number: Adopted Action:  
121.63 Amend
- 4) Statutory Authority: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].
- 5) Effective Date of Amendment: August 12, 2001
- 6) Does this amendment contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 9, 2001, 25 Ill. Reg. 3347
- 10) Has JCAR Issued a Statement of Objection to this amendment? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
No, the emergency rulemaking has expired.
- 14) Are there any amendments pending on this Part: Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>Illinois Register Citation</u>
121.151	Amendment	25 Ill. Reg. 6003, 5/11/01
121.55	Amendment	25 Ill. Reg. 5559, 4/20/01
121.92	Amendment	25 Ill. Reg. 5559, 4/20/01

- 15) Summary and Purpose of Amendment: The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act provides that the Maximum Excess Shelter Deduction shall increase to \$340 effective 03/01/01.

- 16) Information and questions regarding this adopted amendment shall be directed to:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of adopted amendment begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

TITLE 89: SOCIAL SERVICES  
CHAPTER IV: DEPARTMENT OF HUMAN SERVICES  
SUBCHAPTER b: ASSISTANCE PROGRAMS

PART 121  
FOOD STAMPS

## SUBPART A: APPLICATION PROCEDURES

Section	
121.1	Application for Assistance
121.2	Time Limitations on the Disposition of an Application
121.3	Approval of an Application and Initial Authorization of Assistance
121.4	Denial of an Application
121.5	Client Cooperation
121.6	Emergency Assistance
121.7	Expedited Services
121.10	Interviews

## SUBPART B: NON-FINANCIAL FACTORS OF ELIGIBILITY

Section	
121.18	Work Requirement
121.19	Ending a Voluntary Quit Disqualification (Repealed)
121.20	Citizenship
121.21	Residence
121.22	Social Security Numbers
121.23	Work Registration/Participation Requirements
121.24	Individuals Exempt From Work Registration Requirements
121.25	Failure to Comply with Work Provisions
121.26	Period of Sanction
121.27	Voluntary Job Quit/Reduction in Work Hours
121.28	Good Cause for Voluntary Job Quit/Reduction in Work Hours
121.29	Exemptions from Voluntary Quit/Reduction in Work Hour Rules

## SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

Section	
121.30	Unearned Income
121.31	Exempt Unearned Income
121.32	Education Benefits
121.33	Unearned Income In-Kind
121.34	Lump Sum Payments and Income Tax Refunds
121.40	Earned Income
121.41	Budgeting Earned Income
121.50	Exempt Earned Income
121.51	Income from Work/Study/Training Programs
121.52	Earned Income from Roomer and Boarder

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

121.53	Income From Rental Property
121.54	Earned Income In-Kind
121.55	Sponsors of Aliens
121.57	Assets
121.58	Exempt Assets
121.59	Asset Disregards

## SUBPART D: ELIGIBILITY STANDARDS

Section	
121.60	Net Monthly Income Eligibility Standards
121.61	Gross Monthly Income Eligibility Standards
121.62	Income Which Must Be Annualized
121.63	Deductions From Monthly Income
121.64	Food Stamp Benefit Amount

## SUBPART E: HOUSEHOLD CONCEPT

Section	
121.70	Composition of the Assistance Unit
121.71	Living Arrangement
121.72	Nonhousehold Members
121.73	Ineligible Household Members
121.74	Strikers
121.75	Students
121.76	Households Receiving AFDC, SSI, Interim Assistance and/or GA - Categorical Eligibility

## SUBPART F: MISCELLANEOUS PROGRAM PROVISIONS

Section	
121.80	Fraud Disqualification (Renumbered)
121.81	Initiation of Administrative Fraud Hearing (Repealed)
121.82	Definition of Fraud (Renumbered)
121.83	Notification To Applicant Households (Renumbered)
121.84	Disqualification Upon Finding of Fraud (Renumbered)
121.85	Court Imposed Disqualification (Renumbered)
121.90	Monthly Reporting and Retrospective Budgeting (Repealed)
121.91	Monthly Reporting (Repealed)
121.92	Retrospective Budgeting
121.93	Issuance of Food Stamp Benefits
121.94	Replacement of the EBT Card or Food Stamp Benefits
121.95	Restoration of Lost Benefits
121.96	Uses For Food Coupons
121.97	Supplemental Payments
121.98	Client Training for the Electronic Benefits Transfer (EBT) System
121.105	State Food Program (Repealed)
121.107	New State Food Program



ILLINOIS REGISTER

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENT

121.208 Suspension and Termination of Claims (Recodified)

SUBPART I: WORK REQUIREMENT FOR FOOD STAMPS

- Section  
121.220 Work Requirement Components  
121.221 Meeting the Work Requirement with the Earnfare Component  
121.222 Volunteer Community Work Component  
121.223 Work Experience Component  
121.224 Supportive Service Payments to Meet the Work Requirement  
121.225 Meeting the Work Requirement with the Illinois Works Component  
121.226 Meeting the Work Requirement with the JTPA Employability Services Component

AUTHORITY: Implementing Sections 12-4.4 through 12-4.6 and authorized by Section 12-13 of the Illinois Public Aid Code [305 ILCS 5/12-4.4 through 12-4.6 and 12-13].

SOURCE: Adopted December 30, 1977; amended at 3 Ill. Reg. 5, p. 875, effective February 2, 1979; amended at 3 Ill. Reg. 31, p. 109, effective August 3, 1979; amended at 3 Ill. Reg. 33, p. 399, effective August 18, 1979; amended at 3 Ill. Reg. 41, p. 165, effective October 11, 1979; amended at 3 Ill. Reg. 42, p. 230, effective October 9, 1979; amended at 3 Ill. Reg. 44, p. 173, effective October 19, 1979; amended at 3 Ill. Reg. 46, p. 36, effective November 2, 1979; amended at 3 Ill. Reg. 47, p. 96, effective November 13, 1979; amended at 3 Ill. Reg. 48, p. 1, effective November 15, 1979; peremptory amendment at 4 Ill. Reg. 3, p. 49, effective January 9, 1980; peremptory amendment at 4 Ill. Reg. 9, p. 259, effective February 23, 1980; amended at 4 Ill. Reg. 10, p. 253, effective February 27, 1980; amended at 4 Ill. Reg. 12, p. 551, effective March 10, 1980; emergency amendment at 4 Ill. Reg. 29, p. 294, effective July 8, 1980, for maximum of 150 days; amended at 4 Ill. Reg. 37, p. 797, effective September 2, 1980; amended at 4 Ill. Reg. 45, p. 134, effective October 17, 1980; amended at 5 Ill. Reg. 766, effective January 2, 1981; amended at 5 Ill. Reg. 1131, effective January 16, 1981; amended at 5 Ill. Reg. 4586, effective April 15, 1981; peremptory amendment at 5 Ill. Reg. 5722, effective June 1, 1981; amended at 5 Ill. Reg. 7071, effective June 23, 1981; peremptory amendment at 5 Ill. Reg. 10062, effective October 1, 1981; amended at 5 Ill. Reg. 10733, effective October 1, 1981; amended at 5 Ill. Reg. 12736, effective October 29, 1981; amended at 6 Ill. Reg. 1653, effective January 17, 1982; amended at 6 Ill. Reg. 2707, effective March 2, 1982; amended at 6 Ill. Reg. 8159, effective July 1, 1982; amended at 6 Ill. Reg. 10208, effective August 9, 1982; amended at 6 Ill. Reg. 11921, effective September 21, 1982; amended at 6 Ill. Reg. 12318, effective October 1, 1982; amended at 6 Ill. Reg. 13754, effective November 1, 1982; amended at 7 Ill. Reg. 394, effective January 1, 1983; codified at 7 Ill. Reg. 5195; amended at 7 Ill. Reg. 5715, effective May 1, 1983; amended at 7 Ill. Reg. 8118, effective June 24, 1983; peremptory amendment at 7 Ill. Reg. 12899, effective October 1, 1983; amended at 7 Ill. Reg. 13655, effective October 4, 1983; peremptory amendment at 7 Ill. Reg. 16067, effective November

ILLINOIS REGISTER

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENT

- 121.120 Recertification of Eligibility  
121.130 Residents of Shelters for Battered Women and their Children  
121.131 Fleeing Felons and Probation/Parole Violators  
121.135 Incorporation By Reference  
121.140 Small Group Living Arrangement Facilities and Drug/Alcoholic Treatment Centers  
121.145 Quarterly Reporting

SUBPART G: INTENTIONAL VIOLATIONS OF THE PROGRAM

- Section  
121.150 Definition of Intentional Violations of the Program  
121.151 Penalties for Intentional Violations of the Program  
121.152 Notification To Applicant Households  
121.153 Disqualification Upon Finding of Intentional Violation of the Program  
121.154 Court Imposed Disqualification

SUBPART H: FOOD STAMP EMPLOYMENT AND TRAINING PROGRAM

- Section  
121.160 Persons Required to Participate  
121.162 Participation and Cooperation Requirements  
121.164 Orientation  
121.166 Assessment and Employability Plan  
121.170 Job Search Component  
121.172 Basic Education Component  
121.174 Job Readiness Component  
121.176 Work Experience Component  
121.177 Illinois Works Component  
121.178 Job Training Component  
121.179 JTPA Employability Services Component  
121.180 Grant Diversion Component (Repealed)  
121.182 Earnfare Component  
121.184 Sanctions  
121.186 Good Cause for Failure to Cooperate  
121.188 Supportive Services  
121.190 Conciliation and Fair Hearings  
121.200 Types of Claims (Recodified)  
121.201 Establishing a Claim for Intentional Violation of the Program (Recodified)  
121.202 Establishing a Claim for Unintentional Household Errors and Administrative Errors (Recodified)  
121.203 Collecting Claim Against Households (Recodified)  
121.204 Failure to Respond to Initial Demand Letter (Recodified)  
121.205 Methods of Repayment of Food Stamp Claims (Recodified)  
121.206 Determination of Monthly Allotment Reductions (Recodified)  
121.207 Failure to Make Payment in Accordance with Repayment Schedule (Recodified)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

18, 1983; amended at 7 Ill. Reg. 16169, effective November 22, 1983; amended at 8 Ill. Reg. 5673, effective April 18, 1984; amended at 8 Ill. Reg. 7249, effective May 16, 1984; peremptory amendment at 8 Ill. Reg. 10086, effective July 1, 1984; amended at 8 Ill. Reg. 13284, effective July 16, 1984; amended at 8 Ill. Reg. 17900, effective September 14, 1984; amended (by adding Section being codified with no substantive change) at 8 Ill. Reg. 17898; peremptory amendment at 8 Ill. Reg. 19690, effective October 1, 1984; peremptory amendment at 8 Ill. Reg. 22145, effective November 1, 1984; amended at 9 Ill. Reg. 302, effective January 1, 1985; amended at 9 Ill. Reg. 6804, effective May 1, 1985; amended at 9 Ill. Reg. 8665, effective May 29, 1985; peremptory amendment at 9 Ill. Reg. 8898, effective July 1, 1985; amended at 9 Ill. Reg. 11334, effective July 8, 1985; amended at 9 Ill. Reg. 14334, effective September 6, 1985; peremptory amendment at 9 Ill. Reg. 15582, effective October 1, 1985; amended at 9 Ill. Reg. 16889, effective October 16, 1985; amended at 9 Ill. Reg. 19726, effective December 9, 1985; amended at 10 Ill. Reg. 229, effective December 20, 1985; peremptory amendment at 10 Ill. Reg. 7387, effective April 21, 1986; peremptory amendment at 10 Ill. Reg. 7941, effective May 1, 1986; amended at 10 Ill. Reg. 14692, effective August 29, 1986; peremptory amendment at 10 Ill. Reg. 15714, effective October 1, 1986; Sections 121.200 thru 121.208 recodified to 89 Ill. Adm. Code 165 at 10 Ill. Reg. 21094; peremptory amendment at 11 Ill. Reg. 3761, effective February 11, 1987; emergency amendment at 11 Ill. Reg. 3754, effective February 13, 1987, for a maximum of 150 days; emergency amendment at 11 Ill. Reg. 9968, effective May 15, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 10269, effective May 22, 1987; amended at 11 Ill. Reg. 10621, effective May 25, 1987; peremptory amendment at 11 Ill. Reg. 11391, effective July 1, 1987; peremptory amendment at 11 Ill. Reg. 11855, effective June 30, 1987; emergency amendment at 11 Ill. Reg. 12043, effective July 6, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 13635, effective August 1, 1987; amended at 11 Ill. Reg. 14022, effective August 10, 1987; emergency amendment at 11 Ill. Reg. 15261, effective September 1, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 15480, effective September 4, 1987; amended at 11 Ill. Reg. 15634, effective September 11, 1987; amended at 11 Ill. Reg. 18218, effective October 30, 1987; peremptory amendment at 11 Ill. Reg. 18374, effective October 30, 1987; amended at 12 Ill. Reg. 877, effective December 30, 1987; emergency amendment at 12 Ill. Reg. 1941, effective December 31, 1987, for a maximum of 150 days; amended at 12 Ill. Reg. 4204, effective February 5, 1988; amended at 12 Ill. Reg. 9678, effective May 23, 1988; amended at 12 Ill. Reg. 9922, effective June 1, 1988; amended at 12 Ill. Reg. 11463, effective June 30, 1988; amended at 12 Ill. Reg. 12824, effective July 22, 1988; emergency amendment at 12 Ill. Reg. 14045, effective August 19, 1988, for a maximum of 150 days; peremptory amendment at 12 Ill. Reg. 15704, effective October 1, 1988; peremptory amendment at 12 Ill. Reg. 16271, effective October 1, 1988; amended at 12 Ill. Reg. 20161, effective November 30, 1988; amended at 13 Ill. Reg. 3890, effective March 10, 1989; amended at 13 Ill. Reg. 13619, effective August 14, 1989; peremptory amendment at 13 Ill. Reg. 15859, effective October 1, 1989; amended at 14 Ill. Reg. 729, effective January 1, 1990; amended at 14 Ill. Reg. 6349, effective April 13, 1990; amended at 14 Ill. Reg. 13202, effective August 6, 1990; peremptory amendment at 14 Ill. Reg.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

15158, effective October 1, 1990; amended at 14 Ill. Reg. 16983, effective September 30, 1990; amended at 15 Ill. Reg. 11150, effective July 22, 1991; amended at 15 Ill. Reg. 11957, effective August 12, 1991; peremptory amendment at 15 Ill. Reg. 14134, effective October 1, 1991; emergency amendment at 16 Ill. Reg. 757, effective January 1, 1992, for a maximum of 150 days; amended at 16 Ill. Reg. 10011, effective June 15, 1992; amended at 16 Ill. Reg. 13900, effective August 31, 1992; emergency amendment at 16 Ill. Reg. 16221, effective October 1, 1992, for a maximum of 150 days; peremptory amendment at 16 Ill. Reg. 16345, effective October 1, 1992; amended at 16 Ill. Reg. 16624, effective October 23, 1992; amended at 17 Ill. Reg. 644, effective December 31, 1992; amended at 17 Ill. Reg. 4333, effective March 19, 1993; amended at 17 Ill. Reg. 14625, effective August 26, 1993; emergency amendment at 17 Ill. Reg. 15149, effective September 7, 1993, for a maximum of 150 days; peremptory amendment at 17 Ill. Reg. 17477, effective October 1, 1993; expedited correction at 17 Ill. Reg. 21216, effective October 1, 1993; amended at 18 Ill. Reg. 2033, effective January 21, 1994; emergency amendment at 18 Ill. Reg. 2509, effective January 27, 1994, for a maximum of 150 days; amended at 18 Ill. Reg. 3427, effective February 28, 1994; amended at 18 Ill. Reg. 8921, effective June 3, 1994; amended at 18 Ill. Reg. 12829, effective August 5, 1994; amended at 18 Ill. Reg. 14103, effective August 26, 1994; amended at 19 Ill. Reg. 5626, effective March 31, 1995; amended at 19 Ill. Reg. 6648, effective May 5, 1995; emergency amendment at 19 Ill. Reg. 12705, effective September 1, 1995, for a maximum of 150 days; peremptory amendment at 19 Ill. Reg. 13595, effective October 1, 1995; amended at 20 Ill. Reg. 1593, effective January 11, 1996; peremptory amendment at 20 Ill. Reg. 2229, effective January 17, 1996; amended at 20 Ill. Reg. 7902, effective June 1, 1996; amended at 20 Ill. Reg. 11935, effective August 14, 1996; emergency amendment at 20 Ill. Reg. 13381, effective October 1, 1996, for a maximum of 150 days; emergency amendment at 20 Ill. Reg. 13668, effective October 8, 1996, for a maximum of 150 days; amended at 21 Ill. Reg. 3156, effective February 28, 1997; amended at 21 Ill. Reg. 7733, effective June 4, 1997; recodified from the Department of Public Aid to the Department of Human Services at 21 Ill. Reg. 9322; emergency amendment at 22 Ill. Reg. 1954, effective January 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 5502, effective March 4, 1998; amended at 22 Ill. Reg. 7969, effective May 15, 1998; emergency amendment at 22 Ill. Reg. 10660, effective June 1, 1998, for a maximum of 150 days; emergency amendment at 22 Ill. Reg. 12167, effective July 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 16230, effective September 1, 1998; amended at 22 Ill. Reg. 19787, effective October 28, 1998; emergency amendment at 22 Ill. Reg. 19934, effective November 1, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 20099, effective November 1, 1998; emergency amendment at 23 Ill. Reg. 2601, effective February 1, 1999, for a maximum of 150 days; amended at 23 Ill. Reg. 3374, effective March 1, 1999; amended at 23 Ill. Reg. 7285, effective June 18, 1999; emergency amendment at 23 Ill. Reg. 13253, effective October 13, 1999, for a maximum of 150 days; emergency amendment at 24 Ill. Reg. 3871, effective February 24, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 4180, effective March 2, 2000; amended at 24 Ill. Reg. 10198, effective June 27, 2000; amended at 24 Ill. Reg. 15428, effective October 10, 2000; emergency amendment at 24 Ill. Reg. 15468,



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

effective October 1, 2000, for a maximum of 150 days; amended at 25 Ill. Reg. 845, effective January 5, 2001; amended at 25 Ill. Reg. 2423, effective January 25, 2001; emergency amendment at 25 Ill. Reg. 2439, effective January 29, 2001, for a maximum of 150 days; emergency amendment at 25 Ill. Reg. 3707, effective March 1, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 7720, effective ~~10/1/00~~ <sup>8/1/00</sup> -7, 2001; emergency expired July 28, 2001; amended at 25 Ill. Reg. ~~845~~ <sup>845</sup>, effective ~~10/1/00~~ <sup>8/1/00</sup>.

## SUBPART C: FINANCIAL FACTORS OF ELIGIBILITY

**Section 121.63 Deductions From Monthly Income**

- a) The deductions described in this Section shall be allowed in the determination of the adjusted net monthly food stamp income.
- b) Earned Income Deduction. Eighty percent of total gross earned income is considered. See Sections 121.40 through 121.54 for a description of earned income.
- c) Standard Deduction. The standard deduction is \$134 per household per month.
- d) Dependent Care Deduction

- 1) The dependent care deduction consists of payments for the care of a child or other dependent when necessary for a household member to accept or continue employment or to seek employment in compliance with the job search criteria (contained in 89 Ill. Adm. Code 112.70 through 112.73) or to attend training or pursue education which is preparatory for employment.
- 2) The amount of the deduction is to be determined by the actual costs for care and is not to exceed \$200 per month for each child under age 2 and \$175 per month for each other dependent household member.

- e) Child Support Deduction. The child support deduction is the amount of legally obligated child support paid by a household member to or for a nonhousehold member.
- f) Shelter Costs Deduction

- 1) The shelter deduction is the amount of shelter costs that exceeds 50% of the household's total income after the allowable deductions in subsections (b), (c), (d), and (e) of this Section have been made. The shelter deduction shall not exceed \$300. The shelter deduction shall not exceed \$340 for certification periods starting March 1, 2001 or later.
- 2) If the household contains a member who is elderly or disabled, as defined at 7 CFR 271.2 (2000) and Section 121.61, there is no limit on the amount of the excess shelter deduction.
- 3) Shelter costs include only the following:

- A) continuing charges for the shelter occupied by the household (rent, mortgage and other charges leading to the ownership of the shelter, including interest on such charges);
- B) property taxes, State and local assessments and insurance on

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

- C) the structure itself; and
- utility costs, as described in subsection (g) of this Section.

- 4) Shelter costs for a home temporarily unoccupied by the household because of employment or training away from home, illness or abandonment caused by a natural disaster or casualty loss, if:
  - A) the household intends to return to the home;
  - B) the current occupants of the home, if any, are not claiming the shelter costs for food stamp purposes; and
  - C) the home is not leased or rented during the absence of the household.

- 5) Charges for repair of a home which was damaged or destroyed due to a natural disaster. Shelter costs shall not include repair charges which have been or will be reimbursed by private or public relief agencies, insurance companies or any other source.

## g) Utility Costs

- 1) Utility costs include:

- A) the cost of heating and cooking fuel, air conditioning, electricity, water, sewerage, garbage and trash collection;
- B) basic service fee for one telephone (including tax on the basic fee) of \$27; and
- C) fees charged by the utility provider for initial installation.

- 2) Utility deposits are not considered to be utility costs.

- 3) Except for households that claim utility expenses for an unoccupied home, either the air conditioning/heating standard or the electricity standard must be used if the household is billed for air conditioning, heating or electricity. See Section 121.63(g)(7) for households that claim utility expenses for an unoccupied home. Households that are billed for heating or air conditioning, or both, or heating, air conditioning and electricity, must use the air conditioning/heating standard allowance of \$255. Those households that are not billed for air conditioning or heating but are billed for electricity must use the electricity standard allowance of \$151. Households living in rental housing who are billed on a regular basis by a landlord for costs for air conditioning, heating, or electricity must use the appropriate standard. If the air conditioning/heating standard allowance or the electricity standard allowance is used, then no other utility costs may be claimed. If actual utility costs are allowed because the household does not qualify for either standard, then actual, verified costs may be claimed, except that if a separately-billed phone expense is claimed only the basic telephone allowance of \$27 per month is allowed.

- 4) A household that is billed less often than monthly for its costs for heating, air conditioning, or electricity must continue to use the air conditioning/heating standard allowance or the electricity standard allowance, whichever is appropriate, between



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENT

billing months.

- 5) Households in public housing or privately owned rental units that receive a bill for over-usage are not entitled to use the air conditioning/heating standard allowance or the electricity standard allowance. When households (as defined at 7 CFR 273.11(a) (2000)) live together, the air conditioning/heating standard allowance or the electricity standard allowance, whichever is appropriate, shall be divided equally among the households that contribute toward the utility costs whether or not each household participates in the program.
- 6) Households whose expense for heat or electricity, or both, is covered by indirect energy assistance payments under the Illinois Home Energy Assistance Program (47 Ill. Adm. Code 100) shall be entitled to the air conditioning/heating standard allowance or the electricity standard allowance, whichever is appropriate (7 CFR 273.9 and 273.10(d)(6) (2000)). The provisions of subsection (f)(3) of this Section are applicable to households whose expenses for heating or electricity, or both, are covered by indirect energy assistance payments.
- 7) When the household claims a utility expense for an unoccupied home (as defined in Section 121.63(f)(4)), actual utility expenses are allowed for the unoccupied home as well as the current residence. The air conditioning/heating standard or the electricity standard is not used for either home. The appropriate utility standard may be used if the household chooses not to claim utilities for the unoccupied home.
  - h) Excess Medical Deduction. A deduction for excess medical expenses shall be allowed for households which contain an elderly or disabled member as defined at 7 CFR 271.2 (2000) and Section 121.61. The medical expenses incurred by the qualifying household member which are over \$35 will be deducted, if the expenses will not be reimbursed by insurance or a third party.

(Source: Amended at 25 Ill. Reg. 10823-d, effective 10-1-00)

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Treatment and Habilitation Services
- 2) Code Citation: 59 Ill. Adm. Code 112
- 3) Section Numbers: Adopted Action:  
112.80 Amended  
112.90 Amended
- 4) Statutory Authority: Implementing Sections 1-110.5, 1-121.5, 2-102, 2-107.1, 2-107.2, 2-110, 2-110.1, 2-200, 3-207, 3-405, 3-903, 3-910, 4-209, 4-312, 4-704 and 4-709 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-110.5, 1-121.5, 2-102, 2-107.1, 2-107.2, 2-110, 2-110.1, 2-200, 3-207, 3-405, 3-903, 3-910, 4-209, 4-312, 4-704 and 4-709] and Sections 5.1 and 7 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5.1 and 7] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].
- 5) Effective Date of Amendments: August 2, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: March 23, 2001, 25 Ill. Reg. 04086
- 10) Has JCAR Issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any amendments pending on this Part: No
- 15) Summary and Purpose of Amendments: The amendments to Section 112.80 clarify Department procedures and protocol for the use and administration of psychotropic medications in the Department's mental health and developmental disabilities facilities.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

The amendment to Section 112.90 implements the provisions of P.A. 90-0538, Public Act 90-0538, among other things, added a new Section 1-121.5 to the Mental Health and Developmental Disabilities Code. Section 1-121.5 of the Code defines "authorized involuntary treatment" to mean the use of psychotropic medications or electroconvulsive therapy (ECT). Public Act 90-0538 further amends other Sections of the Code to set guidelines and parameters on the Department's use of authorized involuntary treatment.

- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Ms. Susan Weir, Bureau Chief  
Bureau of Administrative Rules and Procedures  
Department of Human Services  
100 South Grand Avenue East  
3rd Floor, Harris Bldg.  
Springfield, Illinois 62762  
(217) 785-9772

The full text of adopted amendments begins on the next page:

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

TITLE 59: MENTAL HEALTH  
CHAPTER I: DEPARTMENT OF HUMAN SERVICES

## PART 112

## TREATMENT AND HABILITATION SERVICES

## Section

- 112.5 Incorporation by reference  
112.10 Utilization review hearings  
112.20 Admission, treatment and habilitation of mentally retarded persons  
112.30 Recipient physical and dental examinations and informed consent for services  
112.40 Release and burial of deceased recipients  
112.50 Tuberculosis control program (Repealed)  
112.70 Protection of human subjects  
112.80 Use of Narcotics narcotics and psychotropic medications psychotropic drugs in Department Facilities facilities  
112.90 Administration of psychotropic psychotropic medications and ECT drugs

AUTHORITY: Implementing Sections 1-110.5, 1-121.5, 2-102, 2-107.1, 2-107.2, 2-110, 2-110.1, 2-200, 3-207, 3-405, 3-903, 3-910, 4-209, 4-312, 4-704 and 4-709, of the Mental Health and Developmental Disabilities Code [405 ILCS 5/1-110.5, 1-121.5, 2-102, 2-107.1, 2-107.2, 2-110.1, 2-200, 3-207, 3-405, 3-903, 3-910, 4-209, 4-312, 4-704, and 4-709] and Sections 5.1 and 7 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5.1 and 7] and authorized by Section 5-104 of the Mental Health and Developmental Disabilities Code [405 ILCS 5/5-104] and Section 5 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5].

SOURCE: Release and Burial of Deceased Patients adopted October 1, 1969; Tuberculosis Control Program adopted May 28, 1975; Protection of Human Subjects adopted October 2, 1973; Use of Narcotics and Psychotropic Drugs in Department Facilities adopted July 1, 1974; amended at 3 Ill. Reg. 28, p. 90, effective July 16, 1979; amended at 4 Ill. Reg. 17, p. 234, effective April 15, 1980; Administration of Psychotropic Drugs adopted June 14, 1974; amended at 3 Ill. Reg. 28, p. 100, effective July 16, 1979; amended at 4 Ill. Reg. 17, p. 234, effective April 15, 1980; rules merged and codified at 5 Ill. Reg. 10725; amended at 9 Ill. Reg. 12785, effective August 1, 1985; amended at 10 Ill. Reg. 11894, effective July 1, 1986; amended at 13 Ill. Reg. 20344, effective December 19, 1989; amended at 21 Ill. Reg. 2210, effective February 1, 1997; recodified from the Department of Mental Health and Developmental Disabilities to the Department of Human Services at 21 Ill. Reg. 9321; amended at 23 Ill. Reg. 10327, effective August 10, 1999; amended at 25 Ill. Reg. 10834, effective \_\_\_\_\_.

Section 112.80 Use of Narcotics narcotics and psychotropic medications psychotropic drugs in Department Facilities facilities

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

- a) In accordance with Section 5.1 of ~~"an Act codifying the powers and duties of the Department of Human Services"~~ the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/5.1], ~~below is a listing list of medication with maximum dosages shall be issued yearly by the Mental Health and Developmental Disabilities Services Pharmacy and Therapeutics Committee. This list of narcotics and psychotropic medications shall represent the official listing of such medications drugs authorized for use in Department facilities.~~

1) For the purposes of this Section, "psychotropic medications drugs" refers to medications:

- A) ~~used drugs-whose use for antipsychotic, antidepressant, antianemic and/or antianxiety purposes as listed in the American Hospital Formulary Service (AHFS) Drug Information Manual (American Society of Health-System Pharmacists, 7272 Wisconsin Avenue, Bethesda, Maryland 20814 (2000) (AGENCY NOTE: this document is published annually and updated quarterly)):~~ ~~AMA--Drug--Evaluations--(American-Medical Association, 1983, latest-edition) or the Physician's Desk Reference (PDR) (Medical Economics Company, Five Paragon Drive, Montvale, NJ 07645-1742--19867 (2000) (AGENCY NOTE: this document is published annually)):~~ and the Drug Facts and Comparisons (Facts and Comparisons, 111 West Port Plaza, Suite 300, St. Louis, Missouri 63146-3098) (2001) (AGENCY NOTE: this document is published annually and updated monthly)):

- B) where there is a body of peer reviewed medical literature supporting its use.

2) "Narcotics" refers to those medications ~~drugs~~ listed as narcotics in the same references in subsection (a)(1)(A).

- b) The Department shall establish a Pharmacy and Therapeutics Committee under the auspices of Mental Health and Developmental Disabilities Services, which shall serve as the vehicle for compliance with 20 ILCS 1705/5.1 as it relates to the establishment of medications that may be utilized within Departmental institutions. The Pharmacy and Therapeutics Committee shall consist of the Administrator of Mental Health and Developmental Disabilities Services, the Chief of Clinical Services for the Office of Mental Health, the Clinical Director for the Office of Developmental Disabilities, the Nursing Coordinator for the Office of Mental Health, the Nursing Coordinator for the Office of Developmental Disabilities, a facility medical director from the Office of Mental Health, a facility medical director from the Office of Developmental Disabilities, the Deputy Director of Pharmacy Services, and the Manager of the Bureau of Pharmacy and Clinical Support Services. The Chairperson of the Pharmacy and Therapeutics Committee shall be the Manager of the Bureau of Pharmacy and Clinical Support Services or his/her designee. The Chairperson shall appoint, as necessary, additional members representing a broad scope of disciplines. The Pharmacy and Therapeutics Committee shall review, at

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

least annually, all medications within the pharmaceutical classes appearing on the Central Formulary, relative to their clinical efficacy and safety for either retention or removal from usage within the Department. The Chairperson may incorporate recommended changes to the Department's Central Formulary based upon his/her professional judgment. The Chairperson Drug-Review-Committee-of-eight-members-of-which-four-shall-be-the-Department's-Associate-Director-for-Clinical-Services-(Chairperson),-the-Department's-Director--of--Research--the-Department's-Chief-of-Medical-Services,-and-the-Department's-Chief-of-Pharmacy-Services--The-Associate-Director-for-Clinical-Services-shall appoint-four-additional-Department-employees-representing-a-broad-scope-of-the-pharmacological-services-and-skills-required-in-the-Department--The-Drug-Review-Committee-shall-review-the-use-of--and-information-on--the--efficacy--and--safety--of-psychotropic-drugs-and-narcotics-listed-in-subsections-(c)(1)--and-(2)--of--this--Section--and other-marketed-psychotropic-drugs-at-least-annually--The-Drug-Review-Committee-shall-recommend-to-the-Associate-Director-for-Clinical-Services-revisions-to-the-list-of-approved-drugs-in-subsections-(c)(1) and-(2)--of--this--Section--and--the-Associate-Director-for-Clinical-Services-shall-propose-amendments-to-this--Section--based-on-his/her professional-medical-judgment--Notwithstanding-the-authorized-use-of-any-drug-pursuant-to-subsection-(c)(1),(2),(3),(4),--or-(5)--of--this-Section--the-Associate-Director-for-Clinical-Services may, based on his/her professional medical judgment, order the immediate discontinuation of the use of a medication drug within the Department's State-operated Department facilities if whenever it is withdrawn from marketing in the United States--and/ or when the U.S. Food and Drug Administration rescinds its approval for marketing in the United States, and/ or when the Pharmacy and Therapeutics Drug Review Committee recommends discontinuation based on information from Department experience with the medication, drug or from the medical literature, that the medication drug lacks clinical efficacy or is unsafe.

- c) The official departmental listing of medication that contains those medications utilized as narcotics and psychotropic medications is the Department's Central Formulary. It shall be updated at least annually and forwarded to each State-operated facility. An additional listing shall be supplied to each State-operated facility that will contain, for each listed psychotropic and narcotic, the Department's maximum daily dose and other criteria relative to safe, effective pharmacotherapies.
- c) ~~List--of--narcotics--and--psychotropic--drugs--for--use--in-Department facilities.~~

1) Narcotics

Alphaprodine-Hydrochloride  
Butorphanol-Tartrate  
Codeine-Phosphate  
Codeine-Sulfate



DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

- Piperacetazine
- Praxepam
- Prochlorperazine
- Protriptyline
- Remazepam
- Rhioridazine
- Rhiothixene
- Tranylcypromine
- Trazodone
- Triazolam
- Trifluoperazine
- Triflupromazine
- Trimipramine

- Hydrochlorides-of-Opium-Alkaloids
- Hydrocodone-Bitartrate
- Hydromorphone-Hydrochloride
- Levorphanol-Tartrate
- Meperidine-Hydrochloride
- Methadone-Hydrochloride
- Morphine-Sulfate
- Nalbuphine-Hydrochloride
- Oxycodone-Hydrochloride
- Oxycodone-Paraphthalate
- Oxymorphone-Hydrochloride
- Pentazocine-Hydrochloride
- Pentazocine-Bactate
- Propoxyphene-Hydrochloride
- Propoxyphene-Napsylate

2) Psychotropic-Drugs

- Acetophenazine
- Alprazolam
- Amitriptyline
- Amoxapine
- Butaperazine
- Carphenazine
- Chlordiazepoxide
- Chlorpromazine
- Chlorpromazine
- Chlorazepate
- Desipramine
- Diacepam
- Doxepin
- Fluphenazine
- Flurazepam
- Halazepam
- Haloperidol
- Hydroxyzine-Pamoate
- Imipramine
- Isoocarboxazid
- Lithium
- Lorazepam
- Loxapine
- Maprotiline
- Meprobamate
- Mesoridazine
- Molindone
- Nortriptyline
- Oxazepam
- Perphenazine
- Phenelzine
- Pimozide

d)3) Medications Drugs not appearing in the Department's Central Formulary that subsection-(e)(2)-of-this-Section-and-which are newly approved for marketing and labeled for psychotropic indications by the U.S. Food and Drug Administration within the previous 12 months shall be prescribed only on the written interim authorization of the Chairperson of the Department's Pharmacy and Therapeutics Committee. facility's--medical-director: The use of any such medication shall be requested by submission of Form IL 462-0705, Formulary Addition Request Form 705. reported--to--the--Chairperson-of-the-Drug-Review Committee-within-15-days-after-initiation-of-the-drug-use: At its next scheduled meeting, the Department's Pharmacy and Therapeutics Committee shall review the medication drug and shall approve or disapprove the use of the medication drug in Department facilities on the basis of available scientific information. Written notice of the Committee's decision will be given to facility directors, facility medical directors and facility pharmacy directors. available--and shall-give-written-interim-notice-to-facility-directors-pending-the next-review-and-amendment-of-this-Section:

e)4) Medications Drugs not appearing in the Department's Central Formulary that subsection-(e)(2)-of-this-Section--and--which are approved for marketing by the U.S. Food and Drug Administration, but which are not labeled by the U.S. Food and Drug Administration for psychotropic indications, but whose use for psychotropic indications is listed in the professional references identified in subsection (a), AMA--Drug Evaluations shall be prescribed only on the written interim authorization of the Department's Chairperson of the Pharmacy and Therapeutics Committee based upon the submission of Form IL 462-0705A, Non-Formulary Request Form 705A facility's---medical-director. The Pharmacy and Therapeutics Committee shall review the medication at its next scheduled meeting for permanent approval or removal drug--and--shall-approve-or-disapprove-the-use-of-the-drug-in Department-facilities on the basis of available scientific information available and shall give written interim notice to facility directors, facility medical directors and facility pharmacy directors of its decision pending-the-next-review-and-amendment-of-this-Section.

(f)5 Medications ~~Drugs--not~~ appearing in the Department's Central Formulary that ~~subsection--(f)3,--and-which~~ are approved for marketing by the U.S. Food and Drug Administration, but ~~which~~ are neither labeled for psychotropic indications by the U.S. Food and Drug Administration nor listed as having psychotropic indications in the professional references identified in subsection (a), ~~AMA-Drug-Evaluations,--but~~ for which there is medical literature supporting their use for psychotropic indications, may be prescribed by the attending physician for up to three calendar days. The attending physician shall document the reason for such use in the recipient's medical record and shall notify the facility's medical director of the use no later than the next working day after administration of the medication ~~drug~~. If the medication ~~drug~~ is to be utilized for more than three calendar days, authorization shall be obtained from the facility's medical director who is responsible for applying to the Chairperson of the Pharmacy and Therapeutics Committee for authorization. ~~the-Drug-Review-Committee~~ ~~for-authorization---If-the-facility's-medical-director-has-submitted-a-written-application-to-the-Chairperson-of-the-Drug-Review-Committee~~ The facility medical director may authorize continuation of the use of the medication ~~drug~~ for up to seven calendar days beyond the initial three-day period (total of 10 calendar days), at which point medication must be discontinued without the authorization. The written response of the Chairperson of the Pharmacy and Therapeutics ~~Drug Review Committee~~, or his or ~~her~~ designee, ~~designate~~ shall be filed in the recipient's medical record together with a copy of the medical director's application.

g)6 Use of any medication ~~drug~~ not authorized pursuant to subsections (a) through (f) ~~subsection--(f)3,--(f)4--or--(f)5--of--this--Section~~ for psychotropic purposes is prohibited, unless its use has been approved for research in writing by the Chairperson of the Mental Health and Developmental Disabilities Services Pharmacy and Therapeutics ~~Drug Review Committee~~, based upon the Committee's review and authorization of the research.

h) Based upon peer-reviewed professional literature and clinical evaluations of facility Formulary Addition Request Forms, the Pharmacy and Therapeutics Committee shall develop and maintain the Department's official formulary of medication that may be used within Department in-patient facilities.

(Source: Amended at 25 Ill. Reg. **10834**, effective \_\_\_\_\_)

**Section 112.90 Administration of Psychotropic Medications and ECT ~~psychotropic drugs~~**

This Section addresses the use of psychotropic medications or electroconvulsive therapy (ECT) in the treatment of patients receiving services within Department programs.

Definitions

"Authorized involuntary treatment" means psychotropic medication or electroconvulsive therapy, including those tests and related procedures that are essential for the safe and effective administration of the treatment. [405 ILCS 5/1-121.5]

"Capable" means the ability of the recipient to make reasoned decisions regarding treatment/habilitation alternatives.

"Code" means the Mental Health and Developmental Disabilities Code [405 ILCS 5].

"Electroconvulsive therapy (ECT)" means the use of electrical stimulation, for therapeutic ends, to induce a generalized seizure.

"Guardianship" refers to the legal relationship between an adult recipient or ward and a court appointed guardian, including a public guardian such as the Office of State Guardian. Illinois guardians may make legally binding decisions on behalf of wards in personal or financial affairs, or both. For the purposes of this Part, the guardian must have court authority to make personal decisions for the ward. Guardians with personal decision-making authority will typically act under a plenary guardianship. A plenary guardian is one who has full decision-making authority over the person without restrictions. However, a guardian may also legitimately act under a temporary or a limited guardianship in which the guardian has clearly defined medical decision-making authority. A parent of an adult recipient without guardianship is not legally authorized to make binding decisions on behalf of a recipient. When doubt exists as to the decision-making authority of a guardian, the guardian shall supply either letters of office or a copy of a court order documenting legal authority to act on behalf of the ward.

"Informed consent" means the voluntary and knowing choice by a recipient or his/her legal guardian.

"Lack of capacity" means the inability, due to mental impairment, to make reasoned decisions regarding treatment/habilitation alternatives, including the taking of medication, by evaluating, among other factors, information about the likelihood of therapeutic benefits and the risk of side effects.

"Legally and clinically competent recipient" means an individual who is not under guardianship and has the capacity to make reasoned decisions and give informed consent.

"Legally and clinically incompetent recipient" means an individual



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

under guardianship or who lacks the capacity to make reasoned decisions and give informed consent.

*"Long-acting psychotropic medication" means psychotropic medications, including but not limited to Haldol Decanoate and Prolixin Decanoate, that are designed so that a single dose will have an intended clinical effect for a period of at least 48 hours. [405 ILCS 5/1-113.5]*

*"Medical Coordinator" means the Medical Coordinator for Mental Health (if the recipient resides in a mental health facility) or the Medical Coordinator for Developmental Disabilities (if the recipient resides in a developmental disabilities facility).*

*"Medication", as used in this Section, means psychotropic medication.*

*"Psychotropic medication" means medication used for antipsychotic, antidepressant, anxiolytic, antianxiety, behavioral modification or behavioral management purposes, as listed in the Physician's Desk Reference (PDR), Drug Information Manual and Drug Facts and Comparisons, as incorporated by Section 112.80(a), or where there is a body of peer reviewed medical literature supporting its use.*

*"Substitute decision maker" means a person who possesses the authority to make decisions under the Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV] or under the Mental Health Treatment Preference Declaration Act [755 ILCS 43]. [405 ILCS 5/1-110.5]*

Proceduresa) Evaluation

1) No psychotropic medication or electroconvulsive therapy (ECT) shall be prescribed for a recipient unless examinations have been conducted in accordance with Section 112.30. The prescribing physician shall conduct the examinations personally, or shall review the record of the examinations. The prescribing physician shall record, sign, and date (with time) the prescription. The prescribing physician shall also document in the recipient's clinical record any appropriate clinical information.

2) With regard to psychotropic medication on an emergency basis, the requirements of subsection (a)(1) need not be met when the prescribing physician has determined by personal observation or from information supplied by another clinician with thorough knowledge of the recipient's current clinical condition that the recipient is in need of immediate medication in order to prevent the recipient from causing serious and imminent physical harm to self or others.

b) Informed Consent

Prior to prescribing psychotropic medications or ECT in non-emergency situations, a physician shall ascertain and document whether the

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

recipient is capable of giving informed consent.

1) Legally and Clinically Competent Recipients

A) If the recipient is able to give informed consent, the physician shall advise the recipient, in writing, of the following:

- i) nature and purpose of the proposed treatment;
- ii) whether the proposed treatment requires periodic testing/procedures to ensure safety/efficacy;
- iii) side effects, risks and benefits of the proposed treatment;

- iv) prognosis and risks without the proposed treatment;
- v) alternative treatments and their risks, side effects, benefits and efficacy; and

vi) the right to refuse the proposed treatment.

B) The required information shall be given to the recipient in a manner consistent with his/her ability to understand, including regular use of sign language for any deaf or hard of hearing individual for whom sign language is a primary mode of communication.

C) Informed written consent shall be obtained from the recipient.

D) If the recipient has previously executed a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act or a health care power of attorney under the Power of Attorney for Health Care Law, the facility is required to act in accordance with that declaration or power of attorney.

2) Legally and Clinically Incompetent Recipients

A) Prior to prescribing psychotropic medications or ECT in non-emergency situations, a physician shall advise the recipient and the recipient's guardian or substitute decision maker, in writing, of the following:

- i) nature and purpose of the proposed treatment;
- ii) whether the proposed treatment requires periodic testing/procedures to ensure safety/efficacy;
- iii) side effects and risks of the proposed treatment;
- iv) prognosis and risks without the proposed treatment;
- v) alternative treatments and their risks, side effects, benefits and efficacy; and
- vi) the right to refuse the proposed treatment.

B) The required information shall be given to the recipient and the recipient's guardian or substitute decision maker in a manner consistent with his/her ability to understand, including regular use of sign language for any deaf or hard of hearing individual for whom sign language is a primary mode of communication.

C) The recipient shall be asked if he/she agrees to receive the proposed treatment. If the recipient does not object,



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

informed written consent shall be obtained from the recipient's guardian or substitute decision maker and shall be documented in the recipient's medical record. If the recipient has no guardian or substitute decision maker or if the guardian or substitute decision maker does not provide such informed written consent, any treatment must proceed in accordance with subsection (c) (Refusal of Treatment).

D) If the recipient objects to the proposed treatment, any treatment must proceed in accordance with subsection (c) (Refusal of Treatment).

E) If the recipient has previously executed a declaration for mental health treatment under the Mental Health Treatment Preference Declaration Act or a health care power of attorney under the Power of Attorney for Health Care Law, the facility is required to act in accordance with that declaration or power of attorney.

## c) Refusal of Treatment

A recipient's refusal to receive psychotropic medication or ECT does not in itself constitute an emergency. Such refusal, as documented in the clinical record, shall be honored except in the following circumstances:

## 1) Emergencies

In an emergency, when treatment is necessary to prevent a recipient from causing serious and imminent physical harm to self or others.

A) In such an emergency, a member of the treatment/habilitation team shall document in the recipient's clinical record that the staff have explored alternative treatment options to contain the emergency. The documentation shall include a written explanation of the reasons why alternative treatments are not appropriate.

B) For administration of psychotropic medications, the prescribing physician or a nurse in consultation with a physician shall document his/her determination that an emergency exists based on a personal examination of the individual. Administration of the medication shall be accompanied by a physician's order.

C) In prescribing psychotropic medications on an emergency basis, the prescribing physician shall examine the recipient and document his/her determination of the initial emergency and response, including the circumstances leading up to the need for emergency treatment, in the recipient's clinical record as soon as possible, but within 24 hours. Psychotropic medication may not be continued unless the need for such medication is redetermined at least every 24 hours and the circumstances demonstrating that need are set forth in the recipient's clinical record. A redetermination is based on a personal examination of the recipient by a

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

physician or a nurse with the consultation of a physician. Treatment shall not be administered over a recipient's refusal under Section 2-107 of the Mental Health and Developmental Disabilities Code for a period in excess of 72 hours, excluding Saturdays, Sundays and holidays, unless the treating physician with the support of the treatment/habilitation team files a petition for a court order under Section 2-107.1 of the Code and the treatment continues to be necessary in order to prevent the recipient from causing serious and imminent physical harm to self or others. If no such petition is filed, treatment must be discontinued.

E) A restriction of rights form shall be completed for each administration of emergency treatment.

F) ECT may be administered over a patient's refusal only with a court order and prior written physician's order or in emergency situations as defined in Section 2-107 of the Code.

G) Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the facility shall advise the recipient as to the circumstances under which the use of emergency forced medication is permitted under Section 2-107(g) of the Mental Health and Developmental Disabilities Code [405 ILCS 5/2-200(d)].

Concurrently, the facility shall ask the recipient which form of intervention he/she would prefer if any of these circumstances arise. The recipient's preference shall be documented in the clinical record and communicated by the facility to the recipient's guardian or substitute decision maker, if any. If any such circumstances arise, the facility shall give due consideration to the preferences of the recipient regarding which form of intervention to use as communicated to the facility by the recipient or as stated in the recipient's advance directive.

H) Under no circumstances may long-acting psychotropic medications be administered under Section 2-107 of the Code.

I) Under no circumstances may ECT be administered to a minor recipient without a court order.

## 2) Administration of Treatment on Court Order

A) If the treating physician, with the support of the treatment/habilitation team, determines that psychotropic medication or ECT is clinically indicated for a recipient who does not at the time pose an imminent risk of serious physical harm to self or others, and the situation described in subsections (b)(2)(c) or (b)(2)(D) of this Part applies, the facility may file a petition in the circuit court under Section 2-107.1 of the Code for court-ordered treatment.

B) If the treating physician, with the support of the

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

treatment/habilitation team, files a petition under Section 2-107.1 of the Code, a physician shall examine the recipient and address the following issues for the court:

- i) whether the recipient has a serious mental illness or developmental disability;
- ii) whether, because of the mental illness or developmental disability, the recipient exhibits any one of the following: deterioration of his/her ability to function, suffering, or threatening behavior;
- iii) whether the illness or disability has existed for a period marked by the continuing presence of the symptoms set forth in subsection (c)(2)(B)(ii) or the repeated episodic occurrence of such symptoms;
- iv) whether the predicted benefits of the treatment will outweigh any possible harm;
- v) whether the recipient lacks the capacity to make a reasoned decision about the treatment;
- vi) whether other less restrictive treatment methods have been explored and found to be inappropriate;
- vii) the specific treatments proposed, including dosage range and/or frequency of administration, as applicable; and
- viii) if the petition seeks authorization for testing and other procedures, the physician shall include a statement that such testing and procedures are essential for the safe and effective administration of the treatment.

- C) If the court grants the petition for involuntary treatment pursuant to Section 2-107.1 of the Code, the recipient may be administered treatment over his/her refusal (or the guardian's or substitute decision maker's refusal if the recipient was legally incompetent but did not object) within the constraints and for the duration of the court order.

d) Monitoring of Treatment

1) Documentation

- A) The attending physician shall examine and document the status of the recipient's condition in the recipient's clinical record as often as the recipient's clinical condition warrants but no less often than every 30 calendar days. Documentation of the rationale for treatment, including type, dosage or frequency of the proposed treatment as applicable, shall be included. Beneficial effects and significant side effects as well as their treatment and/or management or the absence of treatment and/or management shall also be noted.

- B) Facility staff shall document in the recipient's clinical record additional clinical information such as assessments, evaluations or laboratory results as they become available.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

2) Treatment Review

- A) When a recipient at a State-operated mental health facility has been receiving psychotropic medications and/or ECT continuously or regularly for a period of three months, and if such treatment is continued, every six months thereafter for so long as the treatment shall continue, the facility medical director, or other physician designated by the facility director, shall convene a treatment review panel.
- B) The panel shall consist of representatives from at least two of the following clinical disciplines: psychiatry, medicine, clinical pharmacy and nursing. At least one panel member shall be a physician with expertise in the use of psychotropic medication (for example, psychiatrist or behavioral neurologist).
- C) At least 7 days prior to the date of the treatment review panel meeting, the recipient, guardian or substitute decision maker, if any, and any person designated under Section 2-200(b) of the Mental Health and Developmental Disabilities Code shall be given written notification of the time and place of the treatment review panel meeting. The notice shall also advise the recipient of his/her right to designate some person to attend the meeting and assist the recipient in accordance with Section 2-107.2 of the Mental Health and Developmental Disabilities Code.
- D) The panel shall provide a recommendation concerning the suitability of continued treatment.
- E) If, during the course of the treatment review panel meeting, the recipient advises the committee that he/she no longer agrees to continue receiving medication or ECT, or if the recipient has a guardian or substitute decision maker and the guardian or substitute decision maker refuses medication or ECT for the recipient, the treatment shall be discontinued, except when the recipient is receiving treatment pursuant to subsections (c)(1) and (c)(2) of this Section.
  - i) If the panel determines that the recipient is receiving appropriate treatment and that the benefit to the recipient outweighs the risk of harm to the recipient, treatment shall be continued, provided that the recipient does not object (and the guardian or substitute decision maker, if any, does not refuse). (See Section 2-107.2 of the Code.)
  - ii) If the findings of the treatment review panel are not in agreement with the current treatment plan, revision shall be considered by the treatment/habilitation team.
  - iii) If there is disagreement on the implementation of the panel recommendations, the facility medical director



ILLINOIS REGISTER  
DEPARTMENT OF HUMAN SERVICES  
NOTICE OF ADOPTED AMENDMENTS

or lead physician (designated by the facility director) shall review the case and make a final decision. The facility medical director (or lead physician) may consult with the appropriate Medical Coordinator in making a final determination.

- F) The participation of the recipient and guardian or substitute decision maker if any, and the recommendations of the treatment review panel shall be recorded in the recipient's clinical record.

- 3) Annual ECT Report  
The Department of Human Services shall summarize on an annual basis all quarterly reports (prepared in accordance with Section 2-110.1 of the Mental Health and Developmental Disabilities Code) from State-operated hospitals or facilities at which ECT is performed.

This Section addresses the initiation of drug treatment with psychotropic drugs (as defined in Section 112-80) in the newly admitted recipient and the on-going monitoring of drug treatment thereafter. Each Department facility shall establish procedures consistent with this Section in accordance with professional practice requirements, Departmental directives, and the facility's organization, resources, and clinical population. Professional practice means those practices which a licensed physician (the Medical Practice Act of 1997 (225-185-603)) would use when exercising his or her professional clinical judgment in prescribing medication and which a licensed registered nurse (the Illinois Nursing Act of 1987 (225-185-65)) would use when exercising his or her professional clinical judgment in administering medication.

- a) Initiation of drug treatment  
1) All recipients shall receive a medical history, physical examination, and either a psychiatric or, in the case of developmentally disabled recipients, a psychological examination within 24 hours after their admission to a Department facility and those laboratory tests determined by a licensed physician when exercising his or her professional clinical judgment in administering medication shall be ordered.

- 2) No medication shall be prescribed for a recipient unless:  
A) A medical, physical, and either a psychiatric or, in the case of developmentally disabled recipients, a psychological examination of the recipient has been conducted and documented in the recipient's medical record. The prescribing physician shall conduct the examinations personally or shall review the record of the examinations. The recipient's medical record shall also contain the recipient's medical status (as defined in the American Psychiatric Association's Psychiatric Glossary 5th Edition - Washington D.C. 1980), the intended effects of the prescribed medication, and other pertinent information such as the relationship of the drug therapy to

other forms of treatment or habilitation and potential interaction with any other medication being delivered to the recipient, or

- B) The prescribing physician has determined by personal observation that the recipient is in need of immediate medication in order to prevent physical harm to himself or herself or others, and shall so document this in the recipient's medical record, or  
C) The prescribing physician cannot immediately examine the recipient in person, but has determined based on a description of the recipient's behavior, other medications, and known medical problems that immediate administration of psychotropic medication is in the recipient's best interest in order to prevent physical harm to himself or herself or others. The prescribing physician shall document this determination in the recipient's medical record within 48 hours after prescribing medication.  
3) The prescribing physician may verbally (including by telephone) authorize the administration of medication. The prescribing physician shall dictate the oral medication order to a registered nurse pursuant to the Illinois Nursing Act (225-185-65) and shall sign the order within 24 hours. In each case, within 48 hours after any oral authorization, the prescribing physician shall also enter a progress note in the recipient's record that states:  
A) The reasons for prescribing the psychotropic medication including the information given by the person requesting the prescription;  
B) The medication's intended effect, and  
C) The reason the medication order was given verbally, rather than after personal examination of the recipient.  
4) Whenever medication is administered pursuant to a verbal order, the registered or licensed practical nurse who administers the drug shall immediately enter in the recipient's medical record a detailed description of the recipient's behavior prior to the administration of the drug and of the circumstances which in his or her opinion required the administration.  
5) Psychotropic drugs shall be prescribed for specific doses and time, not to exceed 30 days.  
b) Ongoing monitoring of drug treatment  
1) The attending physician shall review as often as the recipient's clinical condition warrants, but no less often than once per month, through personal examination of the recipient and/or the recipient's medical record, and/or staff conferences, the results of medication administered including both beneficial effects and side effects.  
2) The attending physician shall document the status of the recipient's condition in the recipient's medical record as often



## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

as the recipient's clinical condition warrants, but no less often than once per month. Documentation of the rationale for the dose of medication shall be included in the progress notes and/or the treatment or habilitation plans no less often than once per month. Significant side effects, that is, those side effects of medications determined by a licensed physician when exercising his or her professional clinical judgment, to be severe, dangerous, and/or annoying for the recipient, for their absence, shall be noted in the recipient's medical record.

3) Facility staff shall document in the recipient's medical record additional medical, psychiatric, psychological, and social history and psychiatric, psychological and physical findings and laboratory results as this information becomes available.

## c) Reduction of the risk of tardive dyskinesia

1) Use of antipsychotic drugs shall be restricted to the treatment of psychotic disorders, including schizophrenic disorders, paranoid disorders, schizophreniform disorders, brief reactive psychosis, atypical psychosis, manic episode, major depressive episode with psychotic features, infantile autism and toxic or organic psychosis, Tourette's disorders, and severe behavioral disturbance in a recipient having a developmental disability. Use in any other conditions shall be specially justified in the recipient's medical record.

2) Use of antipsychotic drugs for more than six months shall be prescribed only when a continuing response can be shown or when exacerbation occurs or has occurred upon cessation of medication.

3) Whenever a recipient has received antipsychotic medication continuously for three months, the recipient or, if the recipient is under guardianship, the guardian or, if the recipient is a minor, the recipient's parent or guardian shall participate in the decision regarding continuation of the recipient's medication based on the need to balance the risk of tardive dyskinesia with the risk of continuing or exacerbating or developing a psychotic state. Tourette's symptoms or severe behavioral disturbance in a recipient having a developmental disability, if the recipient is an adult not under guardianship, and a clinical assessment of the recipient's intellectual and emotional capabilities puts in doubt the recipient's ability to meaningfully participate in this decision process, timely efforts shall be undertaken to obtain guardianship. The participation of the recipient, guardian or parent and the decision regarding continuation of medication shall be recorded in the recipient's medical record. The recipient's response to medication shall be monitored and shall be re-evaluated with the participation of the recipient, guardian or parent at no less than six-month intervals and this re-evaluation and participation shall be recorded in the recipient's medical record.

## DEPARTMENT OF HUMAN SERVICES

## NOTICE OF ADOPTED AMENDMENTS

(Source: Amended 2009 at 25 Ill. Reg. 10834, effective 1/1/2010)

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Procedures of the Department of State Police Merit Board

2) Code Citation: 80 Ill. Adm. Code 150

3) Section Numbers:  
150.410 Adopted Action:  
150.430 Amendment  
Amendment

4) Statutory Authority: [20 ILCS 2610/9]

5) Effective Date of Rulemaking: August 10, 2001

6) Does this rulemaking contain an automatic repeal date? No

7) Does this rulemaking contain incorporations by reference? No

8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.

9) Notice of Proposal Published in Illinois Register: May 11, 2001, 25 Ill. Reg. 6130

10) Has JCAR issued a Statement of Objection to these amendments? No

11) Differences between proposal and final version: Special Agent will still be a Merit Board rank for promotions. Format changes were made in accordance with the suggestions received from the Administrative Code Unit.

12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements issued by JCAR? Yes

13) Will this rulemaking replace an emergency rulemaking currently in effect?  
No

14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rulemaking: The final rulemaking changes modify the method in which Majors are certified for promotion.

16) Information and questions regarding these adopted amendments shall be directed to:  
James E. Seiber  
Executive Director  
3180 Adloff Lane, Suite 100  
Springfield IL 62703  
217/786-6240

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

## TITLE 80: PUBLIC OFFICIALS AND EMPLOYEES

## SUBTITLE A: MERIT EMPLOYMENT SYSTEMS

## CHAPTER IV: DEPARTMENT OF STATE POLICE MERIT BOARD

## PART 150

## PROCEDURES OF THE DEPARTMENT OF STATE POLICE MERIT BOARD

## SUBPART A: DEFINITIONS

Section  
150.10

Definitions

## SUBPART B: CERTIFICATION FOR APPOINTMENT

Section  
150.210  
150.220  
150.230  
150.240

Qualifications  
Selection Procedures  
Recertification  
Probationary Period

## SUBPART C: CLASSIFICATION OF RANKS

Section  
150.310  
150.320

Ranks  
Interdivisional Transfers

## SUBPART D: CERTIFICATION FOR PROMOTION

Section  
150.410  
150.420  
150.430  
150.440

Board Responsibilities  
Eligibility  
Procedures  
Promotion Probationary Period (Repealed)

## SUBPART E: DISCIPLINARY ACTION

Section  
150.510  
150.520  
150.530  
150.540  
150.550  
150.560  
150.565  
150.570  
150.575  
150.580  
150.585

Merit Board Jurisdiction  
Discipline Afforded the Deputy Director  
Notification to Suspended Officer  
Petition for Review  
Form and Content of Petition for Review  
Filing Procedures  
Procedure for Processing Petition for Review  
Director's Review  
Discipline Afforded the Director  
Complaint Procedures  
Scheduling the Hearing

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

## 150.590 Notification to Officer

## SUBPART F: HEARINGS

Section  
150.610  
150.620  
150.630  
150.640  
150.650  
150.655  
150.660  
150.665  
150.670  
150.675  
150.680  
150.685

Board Docket  
Hearing Officer  
Pre-hearing Conferences  
Motions  
Subpoenas  
Request for Witnesses or Documents  
Evidence Depositions  
Hearing Procedures  
Continuances and Extensions of Time  
Computation of Time  
Decisions of the Board  
Service and Form of Papers

## APPENDIX A

Vision Standards

## APPENDIX B

Physical Fitness Standards

AUTHORITY: Implementing Sections 3 through 14 and authorized by Section 8 of the State Police Act [20 ILCS 2610/3 through 14].

SOURCE: Emergency rule adopted at 2 Ill. Reg. 10, p. 206, effective February 24, 1978, for a maximum of 150 days; emergency amendment at 2 Ill. Reg. 32, p. 37, effective July 27, 1978, for a maximum of 150 days; emergency amendments at 2 Ill. Reg. 51, p. 100, effective December 7, 1978, for a maximum of 150 days; adopted at 2 Ill. Reg. 52, p. 422, effective December 25, 1978; amended at 3 Ill. Reg. 47, p. 86, effective November 12, 1979; emergency amendment at 4 Ill. Reg. 6, p. 284, effective February 1, 1980, for a maximum of 150 days; amended at 5 Ill. Reg. 2739, effective March 2, 1981; amended at 6 Ill. Reg. 10954, effective August 31, 1982; codified at 7 Ill. Reg. 9900; amended at 7 Ill. Reg. 15018, effective November 2, 1983; emergency amendment at 8 Ill. Reg. 379, effective December 27, 1983, for a maximum of 150 days; emergency amendment at 8 Ill. Reg. 3038, effective February 23, 1984, for a maximum of 150 days; amended at 8 Ill. Reg. 7894, effective May 23, 1984; amended at 9 Ill. Reg. 3721, effective March 13, 1985; amended at 9 Ill. Reg. 14328, effective September 6, 1985; recodified from the Department of Law Enforcement Merit Board to the Department of State Police Merit Board pursuant to Executive Order 85-3, effective July 1, 1985, at 10 Ill. Reg. 3283; amended at 10 Ill. Reg. 17752, effective October 1, 1986; amended at 11 Ill. Reg. 7760, effective April 14, 1987; amended at 11 Ill. Reg. 18303, effective October 26, 1987; amended at 12 Ill. Reg. 1118, effective December 24, 1987; amended at 12 Ill. Reg. 10736, effective June 13, 1988; amended at 13 Ill. Reg. 5201, effective April 3, 1989; emergency amendment at 13 Ill. Reg. 16607, effective September 29, 1989, for a maximum of 150 days; amended at 13 Ill. Reg. 19592, effective December 1, 1989; amended at 14 Ill. Reg. 3679, effective February 23, 1990; amended at 15 Ill.



## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

Reg. 11007, effective July 15, 1991; amended at 16 Ill. Reg. 11835, effective July 13, 1992; emergency amendment at 16 Ill. Reg. 17372, effective October 29, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 9716, effective June 10, 1993; expedited correction at 17 Ill. Reg. 14684, effective June 10, 1993; amended at 17 Ill. Reg. 21079, effective November 22, 1993; amended at 19 Ill. Reg. 6679, effective May 1, 1995; amended at 19 Ill. Reg. 7970, effective June 1, 1995; amended at 20 Ill. Reg. 404, effective December 22, 1995; emergency amendment at 20 Ill. Reg. 8062, effective June 4, 1996, for a maximum of 150 days; amended at 20 Ill. Reg. 13663, effective October 3, 1996; amended at 20 Ill. Reg. 14640, effective October 25, 1996; amended at 21 Ill. Reg. 14262, effective October 17, 1997; amended at 22 Ill. Reg. 5092, effective February 26, 1998; amended 22 Ill. Reg. 18076, effective September 28, 1998; amended at 24 Ill. Reg. 1276, effective January 5, 2000; emergency amendment at 24 Ill. Reg. 16103, effective October 12, 2000, for a maximum of 150 days; emergency expired March 11, 2001; amended at 25 Ill. Reg. 10853, effective

## SUBPART D: CERTIFICATION FOR PROMOTION

## Section 150.410 Board Responsibilities

The Board shall make certifications for promotion on the basis of job performance measurement, seniority, education, and written and/or oral examination. Examinations for promotion will be given at least every ~~twelve~~ 12 months for the ranks of Sergeant and Master Sergeant and every ~~twenty-four~~ 24 months for the ranks of Lieutenant and Captain ~~and--Major~~ with notification of time and location to be provided in the promotional announcement. The promotion process for the rank of Major will be initiated when the Illinois State Police makes written request nominating a candidate for that rank.

(Source: Amended at 25 Ill. Reg. 10853, effective 03-11-2001)

## Section 150.430 Procedures

- The Board will provide each officer with official notification announcing the examination and requesting a written response respecting the officer's intention to participate.
- Candidates for promotion must complete examinations at the time designated by the Board in the official notification. No exceptions will be allowed.
- Such candidates must have taken the most recent examination offered by the Board to be eligible for certification for promotion. All candidates taking the examination for each rank will be advised of their total promotional score and standing.
- Promotional Process Components
  - The total promotional score will consist of combined standardized

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

scores or respective percentage weights of the components designated for each rank:

Components	Sgt, Msg	Lt, Capt,--Maj
Written Examination	50% X	X
Performance Appraisal	45% X	X
Seniority in Rank	5 X	X
Assessment Exercise	NA	X

- Candidates for the ranks of Lieutenant and Captain ~~and--Major~~ will participate in a written examination, and an assessment exercise, as well as receive a performance appraisal, and a seniority score. The combined score will be standardized to a one hundred point scale. The top 65% of all Master Sergeants and Lieutenants ~~and--Captains~~ participating in the total promotional process will be certified by the Board.
- The Board will certify to the Director the top 65% of those Troopers, Special Agents and Sergeants participating in the total promotional process.
- There will be a statewide certification list lists for the rank ~~ranks~~ of Captain ~~and--Major~~. The certification lists for Sergeant and Master Sergeant will be according to Districts and the certification lists for Lieutenant will be according to Regions, as defined jointly by the Illinois State Police and the Illinois State Police Merit Board for promotional purposes.
- The top 10 candidates on each certification list for all ranks are equally eligible for promotion by the Director; however, in the event of a tied score, all candidates obtaining such score shall be equally eligible for promotional consideration. The Director may promote accordingly any one of the eligible candidates in accordance with Equal Employment Opportunity Commission regulations (29 CFR 1600 et seq. (July 1, 1982)) and Illinois Department of Human Rights guidelines.
  - As promotions are accepted or waived, that candidate with the next highest total promotional score on the list becomes equally eligible for promotion; however, in the event of a tied score, all candidates obtaining such score shall be equally eligible for promotional consideration;
  - Eligible candidates on the certification list may decline an offer of promotion without losing position on the certification list. In the event of declination, that candidate with the next highest total promotional score becomes equally eligible for promotion; however, in the event of a tied score, all candidates

## DEPARTMENT OF STATE POLICE MERIT BOARD

## NOTICE OF ADOPTED AMENDMENTS

- obtaining such score shall be equally eligible for promotional consideration.
- i) Upon written notification from the Department to the Board that a candidate on the certification list has been suspended, is on leave of absence, or has applied for disability benefits, the Board will remove the candidate's name from the certification list. The candidate's name will be restored on the list in a position in proper relation to the total promotional scores remaining when the suspension or leave of absence terminates or the disability is removed.
- j) The certification list shall remain in force until the new certification list has been established; however, in the event that a certification list becomes exhausted, the Director will file a written request with the Board asking for the certification of additional names on any one list if necessary to fill vacant positions.
- k) Candidates for the rank of Major will be nominated to the Board by written request from the Illinois State Police. The Board will review the position requirements, candidate information and any written/oral examinations necessary to determine if the candidate will be certified for promotion.

(Source: Amended at 25 Ill. Reg. 10859, effective 10/1/00.)

## DEPARTMENT OF POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Pretreatment Programs
- 2) Code citation: 35 Ill. Adm. Code 310
- 3) Section Number: Proposed Action:  
310.107 Amend
- 4) Statutory authority: 415 ILCS 5/7.2, 13, 13.3, and 27.
- 5) Effective date of Amendments: August 14, 2001
- 6) Does this adopted amendment contain an automatic repeal date? No
- 7) Does this adopted amendment contain incorporations by reference? Yes.  
Section 310.107 includes incorporations by reference.
- 8) The adopted amendments, a copy of the Board's opinion and order adopted August 9, 2001, and all materials incorporated by reference are on file in the Board's principal office and are available for public inspection and copying.
- 9) Notice of proposal published in Illinois Register: June 8, 2001, 25 Ill. Reg. 7119.
- 10) Has JCAR issued a Statement of Objections to this amendment? No  
Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3 (2000)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35 (2000)] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR?  
Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3 (2000)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35 (2000)] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.
- 13) Will this amendment replace emergency amendment currently in effect? No
- 14) Are there any other amendments pending on this Part? No

DEPARTMENT OF POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED AMENDMENTS

15) Summary and purpose of Amendment: A more detailed description is contained in the Board's opinion and order of August 9, 2001 in R01-25, which opinion and order is available from the address below. The R01-25 proceeding updates the Board's wastewater pretreatment rules to correspond with amendments adopted by USEPA that appeared in the *Federal Register* during the period July 1, 2000, through December 31, 2000.

16) Information and questions regarding this adopted amendment shall be directed to:

Steven C. Langhoff  
Attorney  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield, IL 62704  
217-782-2615

Request copies of the Board's opinion and order of R01-25 from Don Brown, at 312-814-3461. Copies may also be downloaded from the Board's Website at <http://www.ipcb.state.il.us>.

The full text of the adopted amendment begins on the next page:

DEPARTMENT OF POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD  
  
PART 310  
PRETREATMENT PROGRAMS

SUBPART A: GENERAL PROVISIONS

Section	
310.101	Applicability
310.102	Objectives
310.103	Federal Law
310.104	State Law
310.105	Confidentiality
310.107	Incorporations by Reference
310.110	Definitions
310.111	New Source

SUBPART B: PRETREATMENT STANDARDS

Section	
310.201	General Prohibitions
310.202	Specific Prohibitions
310.210	Specific Limits Developed by POTW
310.211	Local Limits
310.220	Categorical Standards
310.221	Category Determination Request
310.222	Deadline for Compliance with Categorical Standards
310.230	Concentration and Mass Limits
310.232	Dilution
310.233	Combined Wastestream Formula

SUBPART C: REMOVAL CREDITS

Section	
310.301	Special Definitions
310.302	Authority
310.303	Conditions for Authorization to Grant Removal Credits
310.310	Calculation of Revised Discharge Limits
310.311	Demonstration of Consistent Removal
310.312	Provisional Credits
310.320	Compensation for Overflow
310.330	Exception to POTW Pretreatment Program
310.340	Application for Removal Credits Authorization
310.341	Agency Review
310.343	Assistance of POTW
310.350	Continuation of Authorization



## DEPARTMENT OF POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## 310.351 Modification or Withdrawal of Removal Credits

## SUBPART D: PRETREATMENT PERMITS

## Section

310.400 Preamble

310.401 Pretreatment Permits

310.402 Time to Apply

310.403 Imminent Endangerment

310.410 Application

310.411 Certification of Capacity

310.412 Signatures

310.413 Site Visit

310.414 Completeness

310.415 Time Limits

310.420 Standard for Issuance

310.421 Final Action

310.430 Conditions

310.431 Duration of Permits

310.432 Schedules of Compliance

310.441 Effect of a Permit

310.442 Modification

310.443 Revocation

310.444 Appeal

## SUBPART E: POTW PRETREATMENT PROGRAMS

## Section

310.501 Pretreatment Programs Required

310.502 Deadline for Program Approval

310.503 Incorporation of Approved Programs in Permits

310.504 Incorporation of Compliance Schedules in Permits

310.505 Reissuance or Modification of Permits

310.510 Pretreatment Program Requirements

310.521 Program Approval

310.522 Contents of Program Submission

310.524 Content of Removal Allowance Submission

310.531 Agency Action

310.532 Defective Submission

310.533 Water Quality Management

310.541 Deadline for Review

310.542 Public Notice and Hearing

310.543 Agency Decision

310.544 USEPA Objection

310.545 Notice of Decision

310.546 Public Access to Submission

310.547 Appeal

## DEPARTMENT OF POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## SUBPART F: REPORTING REQUIREMENTS

## Section

310.601 Definition of Control Authority

310.602 Baseline Report

310.603 Compliance Schedule

310.604 Report on Compliance with Deadline

310.605 Periodic Reports on Compliance

310.606 Notice of Potential Problems

310.610 Monitoring and Analysis

310.611 Requirements for Non-Categorical Standard Users

310.612 Annual POTW Reports

310.613 Notification of Changed Discharge

310.621 Compliance Schedule for POTW's

310.631 Signatory Requirements for Industrial User Reports

310.632 Signatory Requirements for POTW Reports

310.633 Fraud and False Statements

310.634 Recordkeeping Requirements

310.635 Notification of Discharge of Hazardous Waste

## SUBPART G: FUNDAMENTALLY DIFFERENT FACTORS

## Section

310.701 Definition of Requester

310.702 Purpose and Scope

310.703 Criteria

310.704 Fundamentally Different Factors

310.705 Factors which are Not Fundamentally Different

310.706 More Stringent State Law

301.711 Application Deadline

310.712 Contents of FDF Request

310.713 Deficient Requests

310.714 Public Notice

310.721 Agency Review of FDF Requests

310.722 USEPA Review of FDF Requests

## SUBPART H: ADJUSTMENTS FOR POLLUTANTS IN INTAKE

## Section

310.801 Net/Gross Calculation by USEPA

## SUBPART I: UPSETS

## Section

310.901 Definition

310.902 Effect of an Upset

310.903 Conditions Necessary for an Upset

310.904 Burden of Proof

310.905 Reviewability of Claims of Upset

## DEPARTMENT OF POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## 310.906 User Responsibility in Case of Upset

## SUBPART J: BYPASS

Section	Definition	Bypass	Not Violating	Applicable	Pretreatment	Standards	or
310.910							
310.911	Requirements						
310.912	Notice						
310.913	Prohibition of Bypass						

## SUBPART K: MODIFICATION OF POTW PRETREATMENT PROGRAMS

## Section

310.920

General

310.921 Substantial Modifications Defined

310.922 Approval Procedures for Substantial Modifications

310.923 Approval Procedures for Non-Substantial Modifications

310.924 Incorporation of Modifications into the Permit

**AUTHORITY:** Implementing and authorized by Sections 7.2, 13, 13.3, and 27 of the Environmental Protection Act [415 ILCS 5/7.2, 13, 13.3 and 27].

**SOURCE:** Adopted in R86-44 at 12 Ill. Reg. 2502, effective January 13, 1988; amended in R88-18 at 13 Ill. Reg. 2463, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19243, effective November 27, 1989; amended in R89-12 at 14 Ill. Reg. 7608, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7346, effective April 27, 1992; amended in R95-22 at 20 Ill. Reg. 5533, effective April 1, 1996; amended in R96-12 at 20 Ill. Reg. 10671, effective July 24, 1996; amended in R97-7 at 21 Ill. Reg. 5163, effective April 10, 1997; amended in R98-23 at 22 Ill. Reg. 11465, effective June 22, 1998; amended in R99-17 at 23 Ill. Reg. 8412, effective July 12, 1999; amended in R00-7 at 24 Ill. Reg. 2372, effective January 26, 2000; amended in R00-15 at 24 Ill. Reg. 11633, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1322, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10860, effective 6/1/2001.

## SUBPART A: GENERAL PROVISIONS

## Section 310.107 Incorporations by Reference

a) The following publications are incorporated by reference:

- 1) The consent decree in NRDC v. Costle, 12 Environment Reporter Cases 1833 (D.C. Cir. August 16, 1978).
- 2) Standard Industrial Classification Manual (1972), and 1977 Supplement, republished in 1983, available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20401.

## DEPARTMENT OF POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

b) The following provisions of the Code of Federal Regulations are incorporated by reference:

- 40 CFR 2.302 (1999)
- 40 CFR 25 (1999)
- 40 CFR 122, Appendix D, Tables II and III (1999)
- 40 CFR 128.140(b) (1977)
- 40 CFR 136 (1999), as amended at 64 Fed. Reg. 42552, August 4, 1999, 64 Fed. Reg. 73414, December 30, 1999, and 65 Fed. Reg. 3008, January 19, 2000, and 65 Fed. Reg. 81242, December 22, 2000

40 CFR 403 (1999)

40 CFR 403, Appendix D (1999)

c) The following federal statutes are incorporated by reference:

- 1) Section 1001 of the Criminal Code (18 USC 1001) as of July 1, 1988
- 2) Clean Water Act (33 USC 1251 et seq.) as of July 1, 1988
- 3) Subtitles C and D of the Resource Conservation and Recovery Act (42 USC 6901 et seq.) as of July 1, 1988
- d) This Part incorporates no future editions or amendments.

(Source: Amended at 25 Ill. Reg. 10860, effective 6/1/2001.)

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) Heading of the Part: Sewer Discharge Criteria2) Code citation: 35 Ill. Adm. Code 3073) Section Number: Proposed Action:

307.4700 New Section  
 307.4701 New Section  
 307.4702 New Section  
 307.4703 New Section  
 307.4704 New Section  
 307.5200 New Section  
 307.5201 New Section  
 307.5202 New Section  
 307.5203 New Section  
 307.5204 New Section  
 307.5500 Amend  
 307.5501 Amend  
 307.5502 Amend

4) Statutory authority: 415 ILCS 5/7.2, 13, 13.3, and 27.5) Effective date of amendments: August 14, 20016) Does this rulemaking contain an automatic repeal date? No

7) Do these proposed amendments contain incorporations by reference? Yes. The existing rules include a number of incorporations by reference. The present amendments include a routine periodic update to the version of the federal documents incorporated by reference. Finally, the present amendments include new documents incorporated by reference.

8) The adopted amendments, a copy of the Board's opinion and order adopted August 9, 2001, and all material incorporated by reference are on file in the Board's principal office and are available for public inspection and copying.

9) Notice of proposal published in Illinois Register: June 8, 2001, 25 Ill. Reg. 7127.

10) Has JCAR issued a Statement of Objection to these amendments? No. Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3 (2000)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35 (2000)] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by the Joint Committee on Administrative Rules (JCAR).

11) Differences between proposal and final version: The following table

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

summarizes the differences between the amendments proposed by the Board in an opinion and order dated May 17, 2001, in docket R01-25, and the amendments adopted by the Board in an opinion and order dated August 9, 2001;

Section Revised	Source(s) of Revision(s)	Revision(s)
307.4700(a)	JCAR; Board	Changed "Section" to "Subpart"; Changed "Section 307.4700(a)(1)" to "subsection (a)(1) of this Section"
307.4701(b)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4701(b)(1)" to "subsection (b)(1) of this Section"
307.4701(c)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4701(c)(1)" to "subsection (c)(1) of this Section"
307.4702(a)	JCAR	Added comma after "from"; Added comma after "of"
307.4702(b)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4702(b)(1)" to "subsection (b)(1) of this Section"
307.4702(c)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4702(c)(1)" to "subsection (c)(1) of this Section"



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.4703(a)	JCAR	Added comma after "from"; Added comma after "of"
307.4703(b)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4703(b)(1)" to "subsection (b)(1) of this Section"
307.4703(c)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4703(c)(1)" to "subsection (c)(1) of this Section"
307.4704(b)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4704(b)(1)" to "subsection (b)(1) of this Section"
307.4704(c)	JCAR; Board	Changed "65 Fed. Reg. 49666, August 14, 2000" to "65 Fed. Reg. 81242, December 22, 2000"; Changed "Section 307.4704(c)(1)" to "subsection (c)(1) of this Section"
307.5200(a)	JCAR; Board	Changed "Section" to "Subpart"; Changed "Section 307.5200(a)(1)" to "subsection (a)(1) of this Section"
307.5200(c)	JCAR	Changed "Section" to "Subpart"
307.5201(a)	JCAR	Changed "which" to "that"

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.5201(b)	JCAR; Board	Changed "307.5201(b)(1)" to "subsection (b)(1) of this Section"
307.5201(c)	JCAR; Board	Changed "307.5201(c)(1)" to "subsection (c)(1) of this Section"
307.5202(a)	JCAR	Changed "which" to "that"
307.5202(b)	JCAR; Board	Changed "307.5202(b)(1)" to "subsection (b)(1) of this Section"
307.5202(c)	JCAR; Board	Changed "307.5202(c)(1)" to "subsection (c)(1) of this Section"
307.5203(a)	JCAR	Changed "which" to "that"
307.5203(b)	JCAR; Board	Changed "307.5203(b)(1)" to "subsection (b)(1) of this Section"
307.5203(c)	JCAR; Board	Changed "307.5203(c)(1)" to "subsection (c)(1) of this Section"
307.5204	Board	Changed "307.4701, 307.4702, or 307.4703" to "307.5201, 307.5202, or 307.5203"

12)

Have all the changes agreed upon by the Board and JCAR been made as indicated in the agreements issued by JCAR? Section 13.3 of the Environmental Protection Act [415 ILCS 5/13.3 (2000)] provides that Section 5-35 of the Administrative Procedure Act [5 ILCS 100/5-35 (2000)] does not apply to this rulemaking. Because this rulemaking is not subject to Section 5-35 of the APA, it is not subject to First Notice or to Second Notice review by JCAR.

During the course of this proceeding, JCAR staff has recommended that the

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

Board non-substantively revise certain segments of text. The Board has incorporated the suggested revisions or explained to JCAR staff why the suggested revision was not possible.

- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any other amendments pending on this Part? No
- 15) Summary and purpose of amendments: A more detailed description is contained in the Board's opinion and order of August 9, 2001 in R01-25, which opinion and order is available from the address below.
- The R01-25 proceeding updates the Board's wastewater pretreatment rules to correspond with amendments adopted by USEPA that appeared in the Federal Register during the period July 1, 2000, through December 31, 2001.

- 16) Information and questions regarding these adopted amendments shall be directed to:

Steven C. Langhoff  
Attorney  
Illinois Pollution Control Board  
600 S. Second Street, Suite 402  
Springfield IL 62704  
217-782-2615

Request copies of the Board's opinion and order of R01-25 from Don Brown, at 312-814-3461. Copies may also be downloaded from the Board's Website at <http://www.ipcb.state.il.us>.

The full text of the adopted amendments begins on the next page:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE C: WATER POLLUTION  
CHAPTER I: POLLUTION CONTROL BOARD

PART 307  
SEWER DISCHARGE CRITERIA

## SUBPART A: GENERAL PROVISIONS

Section  
307.101  
307.102  
307.103  
307.104  
307.105  
307.1001  
307.1002  
307.1003  
307.1005

Preamble (Renumbered)  
General Requirements (Renumbered)  
Mercury (Renumbered)  
Cyanide (STORET number 00720) (Renumbered)  
Pretreatment Requirements (Repealed)  
Preamble  
Definitions  
Test Procedures for Measurement  
Toxic Pollutants

## SUBPART B: GENERAL AND SPECIFIC PRETREATMENT REQUIREMENTS

Section  
307.1101  
307.1102  
307.1103

General and Specific Requirements  
Mercury  
Cyanide

## SUBPART F: DAIRY PRODUCTS PROCESSING

Section  
307.1501  
307.1502  
307.1503  
307.1504  
307.1505  
307.1506  
307.1507  
307.1508  
307.1509  
307.1510  
307.1511  
307.1512

Receiving Stations  
Fluid Products  
Cultured Products  
Butter  
Cottage Cheese and Cultured Cream Cheese  
Natural and Processed Cheese  
Fluid Mix for Ice Cream and other Frozen Desserts  
Ice Cream, Frozen Desserts, Novelties and Other Dairy Desserts  
Condensed Milk  
Dry Milk  
Condensed Whey  
Dry Whey

## SUBPART G: GRAIN MILLS

Section  
307.1601  
307.1602

Corn Wet Milling  
Corn Dry Milling

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- 307.1603 Normal Wheat Flour Milling  
307.1604 Bulgur Wheat Flour Milling  
307.1605 Normal Rice Milling  
307.1606 Parboiled Rice Milling  
307.1607 Animal Feed  
307.1608 Hot Cereal  
307.1609 Ready-to-eat Cereal  
307.1610 Wheat Starch and Gluten
- SUBPART H: CANNED AND PRESERVED FRUITS AND VEGETABLES

- Section  
307.1700 General Provisions  
307.1701 Apple Juice  
307.1702 Apple Products  
307.1703 Citrus Products  
307.1704 Frozen Potato Products  
307.1705 Dehydrated Potato Products  
307.1706 Canned and Preserved Fruits  
307.1707 Canned and Preserved Vegetables  
307.1708 Canned and Miscellaneous Specialties
- SUBPART I: CANNED AND PRESERVED SEAFOOD

- Section  
307.1801 Farm-raised Catfish  
307.1815 Fish Meal Processing Subcategory
- SUBPART J: SUGAR PROCESSING
- Section  
307.1901 Beet Sugar Processing  
307.1902 Crystalline Cane Sugar Refining  
307.1903 Liquid Cane Sugar Refining
- SUBPART K: TEXTILE MILLS

- Section  
307.2000 General Provisions  
307.2001 Wool Scouring  
307.2002 Wool Finishing  
307.2003 Low Water Use Processing  
307.2004 Woven Fabric Finishing  
307.2005 Knit Fabric Finishing  
307.2006 Carpet Finishing  
307.2007 Stock and Yarn Finishing  
307.2008 Nonwoven Manufacturing  
307.2009 Felted Fabric Processing

POLLUTION CONTROL BOARD

NOTICE OF ADOPTED AMENDMENTS

- SUBPART L: CEMENT MANUFACTURING
- Section  
307.2101 Nonleaching  
307.2102 Leaching  
307.2103 Materials Storage Piles Runoff

SUBPART M: FEEDLOTS

- Section  
307.2201 General  
307.2202 Ducks

SUBPART N: ELECTROPLATING

- Section  
307.2300 General Provisions  
307.2301 Electroplating of Common Metals  
307.2302 Electroplating of Precious Metals  
307.2304 Anodizing  
307.2305 Coatings  
307.2306 Chemical Etching and Milling  
307.2307 Electroless Plating  
307.2308 Printed Circuit Boards

SUBPART O: ORGANIC CHEMICALS, PLASTICS AND SYNTHETIC FIBERS

- Section  
307.2400 General Provisions  
307.2401 Rayon Fibers  
307.2402 Other Fibers  
307.2403 Thermoplastic Resins  
307.2404 Thermosetting Resins  
307.2405 Commodity Organic Chemicals  
307.2406 Bulk Organic Chemicals  
307.2407 Specialty Organic Chemicals  
307.2410 Indirect Discharge Point Sources  
307.2490 Non-complexed Metal-bearing and Cyanide-bearing Wastestreams  
307.2491 Complexed Metal-bearing Wastestreams

SUBPART P: INORGANIC CHEMICALS MANUFACTURING

- Section  
307.2500 General Provisions  
307.2501 Aluminum Chloride Production  
307.2502 Aluminum Sulfate Production  
307.2503 Calcium Carbide Production  
307.2504 Calcium Chloride Production



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.2505	Calcium Oxide Production
307.2506	Chlor-alkali Process (Chlorine and Sodium or Potassium Hydroxide Production)
307.2508	Hydrofluoric Acid Production
307.2509	Hydrogen Peroxide Production
307.2511	Potassium Metal Production
307.2512	Potassium Dichromate Production
307.2513	Potassium Sulfate Production
307.2514	Sodium Bicarbonate Production
307.2516	Sodium Chloride Production
307.2517	Sodium Dichromate and Sodium Sulfate Production
307.2520	Sodium Sulfite Production
307.2522	Titanium Dioxide Production
307.2523	Aluminum Fluoride Production
307.2524	Ammonium Chloride Production
307.2527	Borax Production
307.2528	Boric Acid Production
307.2529	Bromine Production
307.2530	Calcium Carbonate Production
307.2531	Calcium Hydroxide Production
307.2533	Carbon Monoxide and Byproduct Hydrogen Production
307.2534	Chrome Pigments Production
307.2535	Chromic Acid Production
307.2536	Copper Salts Production
307.2538	Ferric Chloride Production
307.2540	Fluorine Production
307.2541	Hydrogen Production
307.2542	Hydrogen Cyanide Production
307.2543	Iodine Production
307.2544	Lead Monoxide Production
307.2545	Lithium Carbonate Production
307.2547	Nickel Salts Production
307.2549	Oxygen and Nitrogen Production
307.2550	Potassium Chloride Production
307.2551	Potassium Iodide Production
307.2553	Silver Nitrate Production
307.2554	Sodium Bisulfite Production
307.2555	Sodium Fluoride Production
307.2560	Stannic Oxide Production
307.2563	Zinc Sulfate Production
307.2564	Cadmium Pigments and Salts Production
307.2565	Cobalt Salts Production
307.2566	Sodium Chlorate Production
307.2567	Zinc Chloride Production

## SUBPART R: SOAP AND DETERGENTS

Section

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.2701	Soap Manufacturing by Batch Kettle
307.2702	Fatty Acid Manufacturing by Fat Splitting
307.2703	Soap Manufacturing by Fatty Acid Neutralization
307.2704	Glycerine Concentration
307.2705	Glycerine Distillation
307.2706	Manufacture of Soap Flakes and Powders
307.2707	Manufacture of Bar Soaps
307.2708	Manufacture of Liquid Soaps
307.2709	Oleum Sulfonation and Sulfation
307.2710	Air-Sulfur Trioxide Sulfation and Sulfonation
307.2711	Sulfur Trioxide Solvent and Vacuum Sulfonation
307.2712	Sulfamic Acid Sulfation
307.2713	Chlorosulfonic Acid Sulfation
307.2714	Neutralization of Sulfuric Acid Esters and Sulfonic Acids
307.2715	Manufacture of Spray Dried Detergents
307.2716	Manufacture of Liquid Detergents
307.2717	Manufacture of Detergents by Dry Blending
307.2718	Manufacture of Drum Dried Detergents
307.2719	Manufacture of Detergent Bars and Cakes

## SUBPART S: FERTILIZER MANUFACTURING

Section	
307.2801	Phosphate
307.2802	Ammonia
307.2803	Urea
307.2804	Ammonium Nitrate
307.2805	Nitric Acid
307.2806	Ammonium Sulfate Production
307.2807	Mixed and Blend Fertilizer Production

## SUBPART T: PETROLEUM REFINING

Section	
307.2901	Topping
307.2902	Cracking
307.2903	Petrochemical
307.2904	Lube
307.2905	Integrated

## SUBPART U: IRON AND STEEL MANUFACTURING

Section	
307.3000	General Provisions
307.3001	Cokemaking
307.3002	Sintering
307.3003	Ironmaking
307.3004	Steelmaking

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.3005 Vacuum Degassing  
307.3006 Continuous Casting  
307.3007 Hot Forming  
307.3008 Salt Bath Descaling  
307.3009 Acid Pickling  
307.3010 Cold Forming  
307.3011 Alkaline Cleaning  
307.3012 Hot Coating

## SUBPART V: NONFERROUS METALS MANUFACTURING

## Section

307.3100 General Provisions  
307.3101 Bauxite Refining  
307.3102 Primary Aluminum Smelting  
307.3103 Secondary Aluminum Smelting  
307.3104 Primary Copper Smelting  
307.3105 Primary Electrolytic Copper Refining  
307.3106 Secondary Copper  
307.3107 Primary Lead  
307.3108 Primary Zinc  
307.3109 Metallurgical Acid Plants  
307.3110 Primary Tungsten  
307.3111 Primary Columbium-Tantalum  
307.3112 Secondary Silver  
307.3113 Secondary Lead  
307.3114 Primary Antimony  
307.3115 Primary Beryllium  
307.3116 Primary and Secondary Germanium and Gallium  
307.3117 Secondary Indium  
307.3118 Secondary Mercury  
307.3119 Primary Molybdenum and Rhenium  
307.3120 Secondary Molybdenum and Vanadium  
307.3121 Primary Nickel and Cobalt  
307.3122 Secondary Nickel  
307.3123 Primary Precious Metals and Mercury  
307.3124 Secondary Precious Metals  
307.3125 Primary Rare Earth Metals  
307.3126 Secondary Tantalum  
307.3127 Secondary Tin  
307.3128 Primary and Secondary Titanium  
307.3129 Secondary Tungsten and Cobalt  
307.3130 Secondary Uranium  
307.3131 Primary Zirconium and Hafnium

## SUBPART X: STEAM ELECTRIC POWER GENERATING

## Section

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.3301 Steam Electric Power Generating

## SUBPART Y: FERROALLOY MANUFACTURING

## Section

307.3401 Open Electric Furnaces With Wet Air Pollution Control Devices  
307.3402 Covered Electric Furnaces and Other Smelting Operations with Wet Air Pollution Control Devices  
307.3403 Slag Processing  
307.3404 Covered Calcium Carbide Furnaces With Wet Air Pollution Control Devices  
307.3405 Other Calcium Carbide Furnaces  
307.3406 Electrolytic Manganese Products  
307.3407 Electrolytic Chromium

## SUBPART Z: LEATHER TANNING AND FINISHING

## Section

307.3500 General Provisions  
307.3501 Hair Pulp, Chrome Tan, Retan-Wet Finish  
307.3502 Hair Save, Chrome Tan, Retan-Wet Finish  
307.3503 Hair Save or Pulp, Non-Chrome Tan, Retan-Wet Finish  
307.3504 Retan-Wet Finish-Sides  
307.3505 No Beamhouse  
307.3506 Through-the-Blue  
307.3507 Shearling  
307.3508 Pigskin  
307.3509 Retan-Wet Finish-Splits  
307.3590 Potassium Ferricyanide Titration Method

## SUBPART BA: GLASS MANUFACTURING

## Section

307.3601 Insulation Fiberglass  
307.3602 Sheet Glass Manufacturing  
307.3603 Rolled Glass Manufacturing  
307.3604 Plate Glass Manufacturing  
307.3605 Float Glass Manufacturing  
307.3606 Automotive Glass Tempering  
307.3607 Automotive Glass Laminating  
307.3608 Glass Container Manufacturing  
307.3610 Glass Tubing (Danner) Manufacturing  
307.3611 Television Picture Tube Envelope Manufacturing  
307.3612 Incandescent Lamp Envelope Manufacturing  
307.3613 Hand Pressed and Blown Glass Manufacturing

## SUBPART BB: ASBESTOS MANUFACTURING

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

Section	
307.3701	Asbestos-Cement Pipe
307.3702	Asbestos-Cement Sheet
307.3703	Asbestos Paper (Starch Binder)
307.3704	Asbestos Paper (Elastomeric Binder)
307.3705	Asbestos Millboard
307.3706	Asbestos Roofing
307.3707	Asbestos Floor Tile
307.3708	Coating or Finishing of Asbestos Textiles
307.3709	Solvent Recovery
307.3710	Vapor Absorption
307.3711	Wet Dust Collection

## SUBPART BC: RUBBER MANUFACTURING

Section	
307.3801	Tire and Inner Tube Plants
307.3802	Emulsion Crumb Rubber
307.3803	Solution Crumb Rubber
307.3804	Latex Rubber
307.3805	Small-Sized General Molded, Extruded and Fabricated Rubber Plants
307.3806	Medium-Sized General Molded, Extruded and Fabricated Rubber Plants
307.3807	Large-Sized General Molded, Extruded and Fabricated Rubber Plants
307.3808	Wet Digestion Reclaimed Rubber
307.3809	Pan, Dry Digestion and Mechanical Reclaimed Rubber
307.3810	Latex-Dipped, Latex-Extruded and Latex-Molded Rubber
307.3811	Latex Foam

## SUBPART BD: TIMBER PRODUCTS PROCESSING

Section	
307.3900	General Provisions
307.3901	Barking
307.3902	Veneer
307.3903	Plywood
307.3904	Dry Process Hardboard
307.3905	Wet Process Hardboard
307.3906	Wood Preserving-Water Borne or Nonpressure
307.3907	Wood Preserving-Steam
307.3908	Wood Preserving-Boulton
307.3909	Wet Storage
307.3910	Log Washing
307.3911	Sawmills and Planing Mills
307.3912	Finishing
307.3913	Particleboard Manufacturing
307.3914	Insulation Board
307.3915	Wood Furniture and Fixture Production Without Water Wash Spray Booth(s) or Without Laundry Facilities

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.3916	Wood Furniture and Fixture Production with Water Wash Spray Booth(s) or With Laundry Facilities
SUBPART BE: PULP, PAPER AND PAPERBOARD	
Section	
307.4000	General Provisions
307.4001	Dissolving Kraft
307.4002	Bleached Papergrade Kraft and Soda
307.4003	Unbleached Kraft
307.4004	Dissolving Sulfite
307.4005	Papergrade Sulfite
307.4006	Semi-Chemical
307.4007	Mechanical Pulp
307.4008	Non-Wood Chemical Pulp
307.4009	Secondary Fiber Deink
307.4010	Secondary Fiber Non-Deink
307.4011	Fine and Lightweight Papers from Purchased Pulp
307.4012	Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp
307.4013	Groundwood-Thermo-Mechanical (Repealed)
307.4014	Groundwood-CMN Papers (Repealed)
307.4015	Groundwood-Fine Papers (Repealed)
307.4016	Soda (Repealed)
307.4017	Deink (Repealed)
307.4018	Nonintegrated-Fine Papers (Repealed)
307.4019	Nonintegrated-Tissue Papers (Repealed)
307.4020	Tissue From Wastepaper (Repealed)
307.4021	Papergrade Sulfite (Drum Wash) (Repealed)
307.4022	Unbleached Kraft and Semi-Chemical (Repealed)
307.4023	Wastepaper-Molded Products (Repealed)
307.4024	Nonintegrated-Lightweight Papers (Repealed)
307.4025	Nonintegrated-Filter and Nonwoven Papers (Repealed)
307.4026	Nonintegrated-Paperboard (Repealed)

## SUBPART BF: BUILDERS' PAPER AND BOARD MILLS (Repealed)

Section	
307.4101	Builder's Paper and Roofing Felt (Repealed)

## SUBPART BG: MEAT PRODUCTS

Section	
307.4201	Simple Slaughterhouse
307.4202	Complex Slaughterhouse
307.4203	Low-Processing Packinghouse
307.4204	High-Processing Packinghouse
307.4205	Small Processor
307.4206	Meat Cutter



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.4207 Sausage and Luncheon Meats Processor  
 307.4208 Ham Processor  
 307.4209 Canned Meats Processor  
 307.4210 Renderer

## SUBPART BH: METAL FINISHING

Section  
 307.4300 General Provisions  
 307.4301 Metal Finishing

SUBPART BL: CENTRALIZED WASTE TREATMENT

Section  
 307.4700 General Provisions  
 307.4701 Metals Treatment and Recovery  
 307.4702 Oils Treatment and Recovery  
 307.4703 Organics Treatment and Recovery  
 307.4704 Multiple Wastestreams

## SUBPART BN: PHARMACEUTICAL MANUFACTURING

Section  
 307.4900 General Provisions  
 307.4901 Fermentation Products  
 307.4902 Extraction Products  
 307.4903 Chemical Synthesis Products  
 307.4904 Mixing/Compounding and Formulation  
 307.4905 Research (Repealed)

SUBPART BQ: TRANSPORTATION EQUIPMENT CLEANING

Section  
 307.5200 General Provisions  
 307.5201 Tank Trucks and Intermodal Tank Containers Transporting Chemical and Petroleum Cargos  
 307.5202 Rail Tank Cars Transporting Chemical and Petroleum Cargos  
 307.5203 Tank Barges and Ocean/Sea Tankers Transporting Chemical and Petroleum Cargos  
 307.5204 Tanks Transporting Food Grade Cargos

## SUBPART BR: PAVING AND ROOFING MATERIALS (TARS AND ASPHALT)

Section  
 307.5301 Asphalt Emulsion  
 307.5302 Asphalt Concrete  
 307.5303 Asphalt Roofing  
 307.5304 Linoleum and Printed Asphalt Felt

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## SUBPART BS: WASTE COMBUSTORS

Section  
 307.5401 Commercial Hazardous Waste Combustor

## SUBPART BT: LANDFILLS

Section  
 307.5500 General Provisions  
 307.5501 RCRA Subtitle C Hazardous Waste Landfill  
 307.5502 RCRA Subtitle D Non-Hazardous Waste Landfill

## SUBPART BU: PAINT FORMULATING

Section  
 307.5601 Oil-Base Solvent Wash Paint

## SUBPART BV: INK FORMULATING

Section  
 307.5701 Oil-Base Solvent Wash Ink

## SUBPART CD: PESTICIDE CHEMICALS

Section  
 307.6500 General Provisions  
 307.6501 Organic Pesticide Chemicals Manufacturing  
 307.6502 Metallo-Organic Pesticides Chemicals Manufacturing  
 307.6503 Pesticide Chemicals Formulating and Packaging

## SUBPART CG: CARBON BLACK MANUFACTURING

Section  
 307.6801 Carbon Black Furnace Process  
 307.6802 Carbon Black Thermal Process  
 307.6803 Carbon Black Channel Process  
 307.6804 Carbon Black Lamp Process

## SUBPART CJ: BATTERY MANUFACTURING

Section  
 307.7100 General Provisions  
 307.7101 Cadmium  
 307.7102 Calcium  
 307.7103 Lead  
 307.7104 Lecianche  
 307.7105 Lithium  
 307.7106 Magnesium

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

307.7107 Zinc

## SUBPART CL: PLASTICS MOLDING AND FORMING

## Section

307.7300 General Provisions  
307.7301 Contact Cooling and Heating Water  
307.7302 Cleaning Water  
307.7303 Finishing Water

## SUBPART CM: METAL MOLDING AND CASTING

## Section

307.7400 General Provisions  
307.7401 Aluminum Casting  
307.7402 Copper Casting  
307.7403 Ferrous Casting  
307.7404 Zinc Casting

## SUBPART CN: COIL COATING

## Section

307.7500 General Provisions  
307.7501 Steel Basis Material  
307.7502 Galvanized Basis Material  
307.7503 Aluminum Basis Material  
307.7504 Canmaking

## SUBPART CO: PORCELAIN ENAMELING

## Section

307.7600 General Provisions  
307.7601 Steel Basis Material  
307.7602 Cast Iron Basis Material  
307.7603 Aluminum Basis Material  
307.7604 Copper Basis Material

## SUBPART CP: ALUMINUM FORMING

## Section

307.7700 General Provisions  
307.7701 Rolling With Neat Oils  
307.7702 Rolling With Emulsions  
307.7703 Extrusion  
307.7704 Forging  
307.7705 Drawing With Neat Oils  
307.7706 Drawing With Emulsions or Soaps

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

## SUBPART CQ: COPPER FORMING

## Section

307.7800 General Provisions  
307.7801 Copper Forming  
307.7802 Beryllium Copper Forming

## SUBPART CR: ELECTRICAL AND ELECTRONIC COMPONENTS

## Section

307.7901 Semiconductor  
307.7902 Electronic Crystals  
307.7903 Cathode Ray Tube  
307.7904 Luminescent Materials

## SUBPART CT: NONFERROUS METALS FORMING AND METAL POWDERS

## Section

307.8100 General Provisions  
307.8101 Lead-Tin-Bismuth Forming  
307.8102 Magnesium Forming  
307.8103 Nickel-Cobalt Forming  
307.8104 Precious Metals Forming  
307.8105 Refractory Metals Forming  
307.8106 Titanium Forming  
307.8107 Uranium Forming  
307.8108 Zinc Forming  
307.8109 Zirconium-Hafnium Forming  
307.8110 Metal Powders

## APPENDIX A References to Previous Rules (Repealed)

AUTHORITY: Implementing Sections 7.2, 13 and 13.3 and authorized by Section 27 of the Environmental Protection Act (415 ILCS 5/7.2, 13, 13.3, and 27).

SOURCE: Adopted in R70-5, at 1 PCB 426, March 31, 1971; amended in R71-14, at 4 PCB 3, March 7, 1972; amended in R74-3, at 19 PCB 182, October 30, 1975; amended in R74-15, 16, at 31 PCB 405, at 2 Ill. Reg. 44, p. 151, effective November 2, 1978; amended in R76-17, at 31 PCB 713, at 2 Ill. Reg. 45, p. 101, effective November 5, 1978; amended in R76-21, at 44 PCB 203, at 6 Ill. Reg. 563, effective December 24, 1981; codified at 6 Ill. Reg. 7818; amended in R82-5, 10, at 54 PCB 411, at 8 Ill. Reg. 1625, effective January 18, 1984; amended in R86-44 at 12 Ill. Reg. 2592, effective January 13, 1988; amended in R88-11 at 12 Ill. Reg. 13094, effective July 29, 1988; amended in R88-18 at 13 Ill. Reg. 1794, effective January 31, 1989; amended in R89-3 at 13 Ill. Reg. 19288, effective November 17, 1989; amended in R88-9 at 14 Ill. Reg. 3100, effective February 20, 1990; amended in R89-12 at 14 Ill. Reg. 7620, effective May 8, 1990; amended in R91-5 at 16 Ill. Reg. 7377, effective April 27, 1992;

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

amended in R93-2 at 17 Ill. Reg. 19483, effective October 29, 1993; amended in R94-10 at 19 Ill. Reg. 9142, effective June 23, 1995; amended in R95-22 at 20 Ill. Reg. 5549, effective April 1, 1996; amended in R97-23 at 21 Ill. Reg. 11930, effective August 12, 1997; amended in R99-4 at 23 Ill. Reg. 4413, effective March 31, 1999; amended in R99-17 at 23 Ill. Reg. 8421, effective July 12, 1999; amended in R00-15 at 24 Ill. Reg. 11640, effective July 24, 2000; amended in R01-5 at 25 Ill. Reg. 1735, effective January 11, 2001; amended in R01-25 at 25 Ill. Reg. 10867, effective

## SUBPART B1: CENTRALIZED WASTE TREATMENT

## Section 307.4700 General Provisions

## a) Applicability.

1) The Board incorporates by reference 40 CFR 437.1 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

2) This Subpart applies to that portion of wastewater discharges from a centralized waste treatment facility that results from any of the following activities, as defined in the materials incorporated by reference in subsection (a)(1) of this Section:

A) Treatment and recovery of hazardous or non-hazardous industrial metal-bearing wastes, oily wastes and organic-bearing wastes received from off-site; and

B) The treatment of centralized waste treatment wastewater.

b) General definitions. The Board incorporates by reference 40 CFR 437.2 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

c) General pretreatment standards. Any source subject to this Section that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

(Source: Added at 25 Ill. Reg. 10367, effective

## Section 307.4701 Metals Treatment and Recovery

a) Applicability. This Section applies to that portion of the discharge of wastewater from a centralized waste treatment facility that results from the treatment of, or recovery of metals from, both metal-bearing wastes received from off-site and other centralized waste treatment wastewater associated with the treatment of, or recovery of metal-bearing wastes. The Board incorporates by reference 40 CFR 437.10 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

b) Existing sources:

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

1) The Board incorporates by reference 40 CFR 437.15 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

## c) New sources:

1) The Board incorporates by reference 40 CFR 437.16 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (c)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10367, effective

## Section 307.4702 Oils Treatment and Recovery

a) Applicability. This Section applies to that portion of the discharge of wastewater from a centralized waste treatment facility that results from the treatment of, or recovery of oil from both oily wastes received from off-site and other centralized waste treatment wastewater associated with the treatment of, or recovery of oily wastes. The Board incorporates by reference 40 CFR 437.20 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

## b) Existing sources:

1) The Board incorporates by reference 40 CFR 437.25 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

## c) New sources:

1) The Board incorporates by reference 40 CFR 437.26 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in Section 307.4702(c)(1) shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10367, effective



POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED AMENDMENTS

**Section 307.4703 Organics Treatment and Recovery**

- a) Applicability. This Section applies to that portion of the discharge of wastewater from a centralized waste treatment facility that results from the treatment of, or recovery of organic material from both organic wastes received from off-site and other centralized waste treatment wastewater associated with the treatment of, or recovery of, organic wastes. The Board incorporates by reference 40 CFR 437.30 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
- b) Existing sources:
- 1) The Board incorporates by reference 40 CFR 437.35 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
  - 2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**SUBPART BQ: TRANSPORTATION EQUIPMENT CLEANING**

**Section 307.5200 General Provisions**

- a) Applicability.
- 1) The Board incorporates by reference 40 CFR 442.1 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.
  - 2) This Section applies to discharges resulting from cleaning the interior of tanks used to transport chemical, petroleum or food grade cargos, as defined in the materials incorporated by reference in subsection (a)(1) of this Section.
  - b) General definitions. The Board incorporates by reference 40 CFR 442.2 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.
  - c) General pretreatment standards. Any source subject to this Subpart that introduces process wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**Section 307.5201 Tank Trucks and Intermodal Tank Containers Transporting Chemical and Petroleum Cargos**

- a) Applicability. This Section applies to discharges resulting from the cleaning of tank trucks and intermodal tank containers that have been used to transport chemical or petroleum cargos.
- b) Existing sources:
- 1) The Board incorporates by reference 40 CFR 442.15 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.
  - 2) No person subject to the pretreatment standards incorporated by

POLLUTION CONTROL BOARD  
NOTICE OF ADOPTED AMENDMENTS

**Section 307.4704 Multiple Wastestreams**

- a) Applicability. This Section applies to that portion of the discharge of wastewater from a centralized waste treatment facility that results from the treatment of, or recovery of organic material from both organic wastes received from off-site and other centralized waste treatment wastewater associated with the treatment of, or recovery of, organic wastes. The Board incorporates by reference 40 CFR 437.30 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
- b) Existing sources:
- 1) The Board incorporates by reference 40 CFR 437.35 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
  - 2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**Section 307.4704 Multiple Wastestreams**

- a) Applicability. Facilities that treat wastes subject to more than one of the previous Sections in this Subpart B must comply with either the provisions of this Section or the applicable provisions of Section 307.4701, 307.4702, or 307.4703. This Section applies to that portion of the discharge of wastewater from a centralized waste treatment facility that results from mixing any combination of treated or untreated waste otherwise subject to Section 307.4701, 307.4702, or 307.4703. The Board incorporates by reference 40 CFR 437.40 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
- b) Existing sources:
- 1) The Board incorporates by reference 40 CFR 437.46 (1999), as amended at 65 Fed. Reg. 81242, December 22, 2000. This incorporation includes no later amendments or editions.
  - 2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause,

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

## c) New sources:

1) The Board incorporates by reference 40 CFR 442.16 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (c)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**Section 307.5202 Rail Tank Cars Transporting Chemical and Petroleum Cargos**

a) Applicability. This Section applies to discharges resulting from the cleaning of rail tank cars that have been used to transport chemical or petroleum cargos.

## b) Existing sources:

1) The Board incorporates by reference 40 CFR 442.25 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

## c) New sources:

1) The Board incorporates by reference 40 CFR 442.26 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (c)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**Section 307.5203 Tank Barges and Ocean/Sea Tankers Transporting Chemical and Petroleum Cargos**

a) Applicability. This Section applies to discharges resulting from the cleaning of tank barges or ocean/sea tankers that have been used to transport chemical or petroleum cargos.

## b) Existing sources:

1) The Board incorporates by reference 40 CFR 442.35 (1999), as

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

## c) New sources:

1) The Board incorporates by reference 40 CFR 442.36 (1999), as amended at 65 Fed. Reg. 49666, August 14, 2000. This incorporation includes no later amendments or editions.

2) No person subject to the pretreatment standards incorporated by reference in subsection (c)(1) of this Section shall cause, threaten or allow the discharge of any contaminant to a POTW in violation of such standards.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

**Section 307.5204 Tanks Transporting Food Grade Cargos**

This Section applies to discharges resulting from the cleaning of tank trucks, intermodal tank containers, rail tank cars, tank barges and ocean/sea tanker which have been used to transport food grade cargos. If wastewater generated from cleaning tanks used to transport food grade cargos is mixed with wastewater resulting from cleaning tanks used to transport chemical or petroleum cargos, then the combined wastewater is subject to the provisions established for the corresponding tanks in Sections 307.5201, 307.5202, or 307.5203.

(Source: Added at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

## SUBPART BT: LANDFILLS

**Section 307.5500 General Provisions**

## a) Applicability.

1) The Board incorporates by reference 40 CFR 445.1 (1999), as amended at 65 Fed. Reg. 3008, January 19, 2000. This incorporation includes no later amendments or editions.

2) This Section applies to discharges of wastewater from landfill units, as defined in the materials incorporated by reference in subsection (a)(1) of this Section.

b) General definitions. The Board incorporates by reference 40 CFR 445.2 (1999), as amended at 65 Fed. Reg. 3008, January 19, 2000. This incorporation includes no later amendments or editions.

c) General Pretreatment Standards. Any source subject to this Section that introduces wastewater pollutants into a publicly owned treatment



## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310. ~~The Board incorporates by reference 40-CFR-445-3-(1999), as amended at 65-Fed-Reg-3000, January 19, 2000. This incorporation includes no later amendments or editions.~~

(Source: Amended at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

## Section 307.5501 RCRA Subtitle C Hazardous Waste Landfill

a) Applicability. Except as provided in Section 307.5500, this Section applies to discharges of wastewater from landfills subject to the provisions of 40 CFR 264, Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N (Landfills); and 40 CFR 265, Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, Subpart N (Landfills).

b) Existing sources. Any source subject to this Section that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

1) ~~The Board incorporates by reference 40-CFR-445-11-(1999), as amended at 65-Fed-Reg-3000, January 19, 2000 and 65-Fed-Reg-14344, March 16, 2000. This incorporation includes no later amendments or editions.~~

2) ~~No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause threaten or allow the discharge of any contaminant to a POTW in violation of such standards.~~

c) New sources. Any source subject to this Section that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

1) ~~The Board incorporates by reference 40-CFR-445-14-(1999), as amended at 65-Fed-Reg-3000, January 19, 2000. This incorporation includes no later amendments or editions.~~

2) ~~No person subject to the pretreatment standards incorporated by reference in Section 307.5501(c)(1) shall cause threaten or allow the discharge of any contaminant to a POTW in violation of such standards.~~

(Source: Amended at 25 Ill. Reg. 10867, effective \_\_\_\_\_)

## Section 307.5502 RCRA Subtitle D Non-Hazardous Waste Landfill

a) Applicability. Except as provided in Section 307.5500, this Section applies to discharges of wastewater from landfills subject to the

## POLLUTION CONTROL BOARD

## NOTICE OF ADOPTED AMENDMENTS

provisions of 40 CFR 258, Criteria for Municipal Solid Waste Landfills; and 40 CFR 257, Criteria for Classification of Solid Waste Disposal Facilities and Practices.

b) Existing sources. Any source subject to this Section that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

1) ~~The Board incorporates by reference 40-CFR-445-21-(1999), as amended at 65-Fed-Reg-3000, January 19, 2000 and 65-Fed-Reg-14344, March 16, 2000. This incorporation includes no later amendments or editions.~~

2) ~~No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause threaten or allow the discharge of any contaminant to a POTW in violation of such standards.~~

c) New sources. Any source subject to this Section that introduces wastewater pollutants into a publicly owned treatment works (POTW) must comply with Subpart B of 35 Ill. Adm. Code 307 and 35 Ill. Adm. Code 310.

1) ~~The Board incorporates by reference 40-CFR-445-24-(1999), as amended at 65-Fed-Reg-3000, January 19, 2000. This incorporation includes no later amendments or editions.~~

2) ~~No person subject to the pretreatment standards incorporated by reference in subsection (b)(1) of this Section shall cause threaten or allow the discharge of any contaminant to a POTW in violation of such standards.~~

(Source: Amended at 25 Ill. Reg. 10867, effective \_\_\_\_\_)



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Acupuncture Practice Act
- 2) Code Citation: 68 Ill. Adm. Code 1140
- 3) Section Numbers:  
1140.30 Adopted Action:  
Amendment  
1140.40 New Section  
1140.50 Amendment
- 4) Statutory Authority: Acupuncture Practice Act [225 ILCS 2]
- 5) Effective Date of Amendments: August 13, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Date Notice of Proposal Published in Illinois Register: June 1, 2001, at 25 Ill. Reg. 6827
- 10) Has JCAR issued a Statement of Objections to these amendments? No
- 11) Differences between proposal and final version: No substantive differences.
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter? Yes
- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any amendments pending on this Part? No
- 15) Summary and Purpose of Amendments: Public Act 90-723 requires that, after January 1, 2002, applicants must have graduated from a school accredited by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine or similar accrediting body or have completed a comprehensive educational program approved by the Department. This rulemaking establishes those curriculum requirements, consisting of a minimum of 3 academic years (1725 hours or 93 semester credits) including both academic and clinical training.
- 16) Information and questions regarding these adopted amendments shall be directed to:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

Department of Professional Regulation  
Attention: Jean Courtney  
320 West Washington, 3rd Floor  
Springfield, Illinois 62786  
217/785-0813  
Fax: 217/782-7645

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

PART 1140  
ACUPUNCTURE PRACTICE ACT

Section	
1140.10	Definitions
1140.20	Fees
1140.30	Application for Licensure
1140.40	Acupuncture Curriculum
1140.50	Endorsement
1140.60	Renewals
1140.100	Unprofessional Conduct
1140.110	Granting Variances

**AUTHORITY:** Implementing the Acupuncture Practice Act [225 ILCS 21] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105-15(7)].

**SOURCE:** Adopted by 23 Ill. Reg. 5705, effective April 30, 1999; amended at 25 Ill. Reg. 1189, effective \_\_\_\_\_.

## Section 1140.30 Application for Licensure

a) Prior to January 1, 2002, an applicant for an acupuncture license shall apply on forms approved by the Department. The application shall include:

- 1) Either:
  - A) Proof of passage of the National Commission for the Certification of Acupuncturists (NCCA) or National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination or another examination that has been approved by the Department; or
  - B) Current certification from the National Certification Commission for Acupuncture and Oriental Medicine;
- 2) Proof of successful completion of the Clean Needle Technique (CNT) Course offered by the Council of Colleges of Acupuncture and Oriental Medicine;
- 3) A complete work history; and
- 4) The required fee specified in Section 1140.20 of this Part.

b) Beginning January 1, 2002, the Department shall issue a license to an applicant who submits with the application proof of the following:

- 1) Education
  - A) Graduation from a school accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or a similar accrediting body approved by the Department; or

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

B) Completion of a comprehensive educational program approved in accordance with Section 1140.40 by the Department; and  
 2) Passing the National Commission for the Certification of Acupuncturists (NCCA) examination, National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination or a substantially equivalent examination approved by the Department;

3) Proof of successful completion of the Clean Needle Technique (CNT) course offered by the Council of Colleges of Acupuncture and Oriental Medicine;

4) A complete work history since completion of acupuncture education; and

5) The required fee specified in Section 1140.20.

c) In lieu of the requirements in subsection (a)(1) and (a)(2) above, an applicant may, prior to December 31, 1999, submit proof of active practice for at least 3 of the last 5 years and:

1) Graduation from a formal full-time acupuncture program consisting of a minimum of 1,350 hours of entry level acupuncture education (including at least 500 hours of clinic). A copy of the transcript shall accompany the application; or

2) Completion of an apprenticeship, signed by the preceptor, of at least 4,000 contact hours in acupuncture techniques in a 3- to 6-year period. The preceptor must have had at least 5 years experience prior to the beginning of the apprenticeship, and his or her practice must include the use of acupuncture as a primary means of treatment with a minimum of 100 different patients and 500 patient visits per year during the apprenticeship. A copy of the preceptor's curriculum vitae shall accompany the application; or

3) Practice of acupuncture as a primary means of treatment for at least 5 additional years (a total of a minimum of 8 years) that includes the use of acupuncture in general practice with a minimum of 100 different patients and 500 patient visits per year. Five affidavits attesting to 5 years of practice from peers or colleagues shall accompany the application.

de) All documents shall be submitted to the Department in English.

ed) If the applicant has ever been licensed in another jurisdiction, he/she shall also submit a certification, on forms provided by the Department, from the jurisdiction in which the applicant was originally licensed and in which the applicant is currently licensed, stating:

1) The time during which the applicant was licensed in that jurisdiction, including the date of the original issuance of the license;

2) A description of the examination in that jurisdiction; and

3) Whether the file on the applicant contains any record of disciplinary actions taken or pending.

fe) When the accuracy of any submitted documentation or experience is

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

questioned by the Department or the Board because of lack of information, discrepancies or conflicts in information given or a need for clarification, the applicant seeking licensure shall be requested to:

- 1) Provide such information as may be necessary; and/or
- 2) Appear for an interview before the Board to explain such relevance or sufficiency, clarify information, or clear up any discrepancies or conflicts in information.

(Source: Amended at 25 Ill. Reg. 10393, effective \_\_\_\_\_)

**Section 1140.40 Acupuncture Curriculum**

The Department shall, upon the recommendation of the Board of Acupuncture, approve an applicant's acupuncture curriculum if it meets the following minimum criteria:

- a) The school from which the applicant was graduated:
  - 1) Is legally recognized and authorized by the jurisdiction in which it is located to confer an acupuncture degree; and
  - 2) Has a faculty that comprises a sufficient number of full-time instructors to make certain that the educational obligations to the student are fulfilled. The faculty must have demonstrated competence as evidenced by appropriate degrees in their areas of teaching from professional colleges or institutions; and
  - 3) Maintains permanent student records that summarize the credentials for admission, attendance and grades and other records of performance.
- b) Curriculum shall be a minimum of at least 3 academic years (a minimum of 1725 hours or 93 semester credits or its equivalent). This must be composed of at least:
  - 1) 705 hours (47 semester hours or its equivalent) in theory and treatment techniques in acupuncture and related studies. Topics shall include, but not be limited to, the following:
    - A) History of Acupuncture;
    - B) Basic Theory. Topics include Yin, Yang, 8 principles, and 5 elements; Zang (viscera) organs and Fu (bowels) organs and extraordinary organs; theory of channels (meridians) and collaterals, function of channel and collateral; Qi blood and body fluid, Qi tonification (supplementation) and sedation (draining); the etiology (the causes of diseases) such as 6 exogenous, 7 emotional factors and non-internal or non-external reasons;
    - C) Point Location and Channel (Meridian) Theory. Topics include nomenclature and distribution of the 14 channels on the body surface--12 regular channels, Ren (conception) channel and Du (governing) channel; classification of points; points study should include the method of locating

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

the points, anatomic structures, classification of points, functions and indications, and contraindications; know the specific points, such as Five Shu points, Yuan (source) points, Luo (connecting) points, Xi (left) points, Back-Shu points, Front-Mu points, Crossing points; 8 extraordinary channels and points;

D) Acupuncture Treatment. Topics include history of the patient and charting; the Five Examinations; measuring and recording vital signs; methods and systems for planning, carrying out and evaluating a treatment and prognosis; contraindications of treatment; indications of potential for increased risk to the patient (e.g., immune compromised patient, diabetic patient), the need to modify standard therapeutic approach (e.g., infants and children, pregnancy), and apparently benign presentations that may have a more serious cause (hypertension, headaches);

E) Treatment Techniques. Topics include needle insertion: depth, duration, manipulation and withdrawal; the appearance of Qi; Moxa: application, direct and indirect, etc.; other techniques (e.g., bleeding, moxibustion, cupping, Gua Sha, 7 star); tonification and sedation techniques; knowledge relating to the treatment of acute and chronic conditions, first aid, analgesia, anesthesia, and electrical stimulation; safety issues; Oriental bodywork therapy (e.g., Tui Na, Shiatsu, Amma, acupressure, etc.); and

F) Ethics and Practice Management. Topics include confidentiality; informed consent; understanding the scope of practice; recordkeeping: legal requirements, release of data; ethical and legal aspects of referring patients to another practitioner; professional conduct and appropriate interpersonal behavior; laws and regulations governing the practice of acupuncture; recognition and clarification of patient expectations; general liability insurance; legal requirements; professional liability insurance; risk management and quality assurance; building and managing a practice, including ethical and legal aspects of third party reimbursement; and professional development.

No more than 72 hours may count towards history and ethics and practice management.

2) 560 hours (22 semester credits or its equivalent) in clinical training.

A) The program must assure that each student participates in a minimum of 500 hours in the supervised care of patients using acupuncture. This portion of the clinical training, conducted under the supervision of program-approved supervisors, must consist of 250 student-performed treatments where students conduct patient interviews, participate in treatment planning, perform appropriate



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

acupuncture treatments, and follow up on patients' responses to treatment.

- B) The supervised clinical practice must be an internship that provides the student training in all phases of patient care and must be conducted in a teaching clinic operated by the institution or in a clinical facility with a formal affiliation with the institution where the institution exercises academic oversight substantially equivalent to the academic oversight exercised for teaching clinics operated by the institution, where:

- i) Clinical instructors' qualifications meet school requirements for clinical instruction;
  - ii) Regular, systematic evaluation of the clinical experience takes place; and
  - iii) Clinical training supervision procedures are substantially equivalent to those within the teaching clinic operated by the institution. Student interns must receive training from a variety of clinical faculty in order to ensure that interns are exposed to different practice styles and instructional methods.
- C) The remaining 160 hours may be acquired in observation and case review.

- 3) 360 hours (24 semester credits) in biomedical clinical sciences.

- A) Biomedical Clinical Sciences. Topics include basic science courses; biomedical and clinical concepts and terms; human anatomy and physiology; pathology and the biomedical disease model; pharmacology; the nature of the biomedical clinical process, including history taking, diagnosis, treatment and follow-up; the clinical relevance of laboratory and diagnostic tests and procedures, as well as biomedical physical examination findings; and

- B) Clean Needle Technique. Infectious diseases, sterilization procedures, needle handling and disposal, and other issues relevant to bloodborne and surface pathogens; the basis and need for referral and/or consultation; the range of biomedical referral resources and the modalities they employ.

- f) An individual who is deficient in course work may complete the required courses at a regionally accredited college or university or a school of acupuncture accredited by ACAOM. The individual will be required to submit a transcript from the program indicating successful completion of the course and a course description.

(Source: Added at 25 Ill. Reg. 10893, effective

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- a) An applicant who is licensed/registered under the laws of another state or territory of the United States who wishes to be licensed in Illinois as an acupuncturist shall file an application with the Department, on forms provided by the Department, that includes:

- 1) One of the following either:
  - A) Proof of passage of the National Commission for the Certification of Acupuncturists (NCCA) or National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examination or another examination that has been approved by the Department;
  - B) Current certification from the National Certification Commission for Acupuncture and Oriental Medicine; or
  - C) Verification of meeting examination, education, apprenticeship or experience requirements as set forth in Section 1140.30 of this Part for individuals licensed in another jurisdiction prior to January 1, 2000; or
- D) For applicants licensed after January 1, 2002, proof of:
  - i) Graduation from a school accredited by the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM) or a similar accrediting body approved by the Department; or
  - ii) Completion of a comprehensive educational program approved in accordance with Section 1140.40 by the Department;

- 2) Proof of successful completion of the Clean Needle Technique (CNT) Course offered by the Council of Colleges of Acupuncture and Oriental Medicine;

- 3) Certification from the jurisdiction of original licensure and the jurisdiction in which the applicant is currently licensed and practicing, if other than original, stating the time during which the applicant was licensed in that state, whether the file on the applicant contains any disciplinary actions taken or pending, and the applicant's license number;

- 4) Complete work history since completion of training and/or education; and

- 5) The required fee specified in Section 1140.20 of this Part.

- b) The Department shall examine each endorsement application to determine whether the requirements and examination in the jurisdiction at the date of licensing were substantially equivalent to the requirements and examination of the Act or whether the applicant possesses individual qualifications that were substantially equivalent to the requirements of the Act.

- c) The Department shall either issue a license by endorsement to the applicant or notify the applicant in writing of the reasons for the denial of the application.

(Source: Amended at 25 Ill. Reg. 10893, effective

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Illinois Dental Practice Act
- 2) Code Citation: 68 Ill. Adm. Code 1220
- 3) Section Numbers: Adopted Action:  
1220.240 Amendment  
1220.245 New Section  
1220.530 Repealed
- 4) Statutory Authority: Illinois Dental Practice Act [225 ILCS 25]
- 5) Effective Date of Amendments: August 13, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: June 1, 2001, at 25 Ill. Reg. 6835
- 10) Has JCAR issued a Statement of Objection to these amendments? No
- 11) Differences between proposal and final version: None
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter? Yes
- 13) Will these amendments replace emergency amendments currently in effect? No
- 14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendments: Public Act 91-689, effective January 1, 2001, allows dental hygienists to administer local anesthetics if properly trained. These amendments implement this provision and establish the number of hours of training required, course curriculum, etc., in Section 1220.240. Individuals graduating after January 1, 1999 from an approved hygienist program that included administration of local anesthetics in its curriculum will not be required to complete additional courses, nor will hygienists previously licensed in another state where they were authorized to administer local anesthetics. Section 1220.245, regarding duties of dental assistants, is amended by permitting dental assistants who have graduated from an approved program or are currently certified by the Dental Assisting National Board to perform expanded

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

duties if properly trained. Dental assistants who graduated after January 1, 1999 from an approved program that included the expanded duties shall not have to complete additional coursework. Section 1220.530, which created the Anesthesia Review Panel, is repealed.

- 16) Information and questions regarding these amendments part shall be directed to:

Department of Professional Regulation  
Attention: Jean Courtney  
320 West Washington, 3rd Floor  
Springfield, Illinois 62786  
217/785-0813  
Fax: 217/782-7645

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

TITLE 68: PROFESSIONS AND OCCUPATIONS  
CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATION  
SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1220

## ILLINOIS DENTAL PRACTICE ACT

## SUBPART A: DENTIST

Section	
1220.100	Application for Licensure
1220.110	Application for Examination
1220.120	Clinical Examinations
1220.130	System of Retaking the Clinical Sections of the Examination
1220.140	Minimum Standards for an Approved Curriculum in Dentistry
1220.150	Licensure (Repealed)
1220.155	Restricted Faculty Licenses
1220.156	Temporary Training License
1220.160	Restoration
1220.170	Renewal

## SUBPART B: DENTAL HYGIENIST

Section	
1220.200	Application for Licensure
1220.210	Application for Examination
1220.220	Clinical Examination
1220.230	System of Grading (Repealed)
1220.231	System of Retaking the Clinical Examination
1220.240	Prescribed Duties of Dental Hygienists
1220.245	Prescribed Duties of Dental Assistants
1220.250	Approved Programs of Dental Hygiene
1220.260	Restoration
1220.270	Renewal

## SUBPART C: DENTAL SPECIALIST

Section	
1220.310	Applications
1220.320	Examination
1220.330	System of Grading (Repealed)
1220.335	American Board Diplomates
1220.340	Specialty Listing (Repealed)
1220.350	Restoration
1220.360	Renewal

## SUBPART D: GENERAL

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

Section	
1220.380	Definitions
1220.400	Reportable Diseases and Conditions
1220.405	Reporting of Adverse Occurrences
1220.410	Endorsement
1220.415	Fees
1220.421	Advertising
1220.425	Referral Services
1220.431	Employment by Corporation (Repealed)
1220.435	Renewals (Repealed)
1220.440	Continuing Education
1220.441	Granting Variances

## SUBPART E: ANESTHESIA PERMITS

Section	
1220.500	Definitions
1220.505	Anxiolysis in the Dental Office Setting
1220.510	Conscious Sedation in the Dental Office Setting, Parenteral
1220.520	Deep Sedation and General Anesthesia in the Dental Office Setting
1220.525	Renewal
1220.530	Anesthesia Review Panel (Repealed)
1220.540	Approved Programs in Anesthesiology
1220.550	Reporting of Adverse Occurrences (Repealed)
1220.560	Restoration of Permits

APPENDIX A	Pre-clinical Restorative Dentistry Sub-section (Repealed)
APPENDIX B	Dental Assistant Permitted Procedures (Repealed)
APPENDIX C	Dental Hygienist Permitted Procedures (Repealed)

AUTHORITY: Implementing the Illinois Dental Practice Act [225 ILCS 25] and authorized by Section 2105-15(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-15(7)].

SOURCE: Rules and Regulations for the Administration and Enforcement of the Provisions of the Illinois Dental Practice Act, effective August 16, 1967; amended at 3 Ill. Reg. 16, p. 21, effective April 21, 1979; amended at 3 Ill. Reg. 42, p. 266, effective October 3, 1979; codified at 5 Ill. Reg. 11028; emergency amendment at 6 Ill. Reg. 916, effective January 6, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 4174, effective May 24, 1982; amended at 6 Ill. Reg. 7448, effective June 15, 1982; emergency amendment at 7 Ill. Reg. 8952, effective July 15, 1983, for a maximum of 150 days; emergency expired December 12, 1983; amended at 8 Ill. Reg. 15610, effective August 15, 1984; amended at 10 Ill. Reg. 20725, effective December 1, 1986; transferred from Chapter I, 68 Ill. Adm. Code 220 (Department of Registration and Education) to Chapter VII, 68 Ill. Adm. Code 1220 (Department of Professional Regulation) pursuant to P.A. 85-225, effective January 1, 1988, at 12 Ill. Reg.



## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

2926; amended at 13 Ill. Reg. 4191, effective March 16, 1989; amended at 13 Ill. Reg. 15043, effective September 11, 1989; amended at 17 Ill. Reg. 1559, effective January 25, 1993; emergency amendment at 17 Ill. Reg. 8309, effective May 21, 1993, for a maximum of 150 days; amended at 17 Ill. Reg. 15890, effective September 21, 1993; amended at 17 Ill. Reg. 21492, effective December 1, 1993; amended at 19 Ill. Reg. 6606, effective April 28, 1995; amended at 21 Ill. Reg. 378, effective December 20, 1996; emergency amendment at 22 Ill. Reg. 2332, effective January 8, 1998, for a maximum of 150 days; amended at 22 Ill. Reg. 10574, effective June 1, 1998; amended at 22 Ill. Reg. 14880, effective July 29, 1998; amended at 23 Ill. Reg. 7294, effective June 10, 1999; amended at 24 Ill. Reg. 13992, effective August 31, 2000; amended at 25 Ill. Reg. 16601, effective \_\_\_\_\_.

**Section 1220.240 Prescribed Duties of Dental Hygienists**

- a) Dental hygienists may perform the operative procedure of dental hygiene, consisting of oral prophylaxis procedures.
- b) Dental hygienists may perform dental health education functions and may record case histories and oral conditions observed.
- c) Dental hygienists may perform all procedures that may be performed by an appropriately trained dental assistant.
- d) Dental hygienists shall not perform those procedures which constitute the practice of dentistry as described in the Illinois Dental Practice Act. Hygienists may not perform procedures that require the professional judgment and skill of a dentist. Such prohibited procedures include, but shall not be limited to, the following:
  - 1) Making denture adjustments.
  - 2) Condensing or carving amalgam restorations.
  - 3) Placing and finishing composite restorations.
  - 4) Taking final impressions for the fabrication of prosthetic appliances, crowns, bridges, inlays, onlays or other restorative or replacement dentistry.
  - 5) Permanently cementing permanent crowns or bridges.
  - 6) Permanently re-cementing permanent crowns or bridges that have come loose.
- e) Dental hygienists may administer and monitor nitrous oxide under the following conditions:
  - 1) The dental hygienist functions under the supervision of the dentist who remains in the facility;
  - 2) The dental hygienist may administer (start the flow of) nitrous oxide to the patient and control the induction of the gas, so that the patient is at a level of analgesia not anesthesia;
  - 3) The dental hygienist may remove the patient from nitrous oxide when the hygiene procedures have been completed; and
  - 4) The dental hygienist is responsible for obtaining proof of certification, validating completion of a 12 hour course relative to nitrous oxide analgesia and submitting certification to the

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

dentist. Such course shall have been completed no earlier than December 31, 1994. A dental hygienist who completed the 12 hour course shall complete an additional 2 hour course in nitrous oxide analgesia administration. The dental hygienist, who has not completed the 12 hour course, shall complete an approved course of 14 hours relative to the administration and monitoring of nitrous oxide analgesia and submit certification of successful completion to the dentist. Such course shall have been completed no earlier than January 1, 1998. An individual who graduated from an approved dental hygiene program after January 1, 1998 that contained nitrous oxide analgesia administration and monitoring in the curriculum shall not be required to complete the 14 hour course upon proof to the dentist of the required curriculum. Proof of nitrous oxide analgesia education shall be made available to the Department upon request. The required hours shall include both didactic and clinical components and be given by a continuing education sponsor approved pursuant to Section 1220.440 or a dental hygiene program approved by the Department pursuant to Section 1220.250.

- f) Dental hygienists may administer local anesthetics under the following conditions:

- 1) The dental hygienist functions under the supervision of the dentist who remains in the facility.
- 2) The dental hygienist is responsible for obtaining proof of certification, indicating successful completion of a 32 hour course that contains 24 hours of lecture and 8 hours of clinical training relative to the administration of local anesthetics and submitting certification to the dentist. An individual who graduated from an approved dental hygiene program after January 1, 1999 that contained administration of local anesthetics in the curriculum shall not be required to complete the 32 hour course upon proof to the dentist of the required curriculum. Proof of completion of education shall be made available to the Department upon request. The required hours shall include both didactic and clinical components and be given by a continuing education sponsor approved pursuant to Section 1220.440 or a dental or a dental hygiene program approved by the Department pursuant to Section 1220.250. The course shall contain at a minimum the following topics:
  - A) Patient preevaluation, which includes dental and medical health history (e.g., drug interactions/anxiety/pain and a physical evaluation);
  - B) Pharmacology (e.g., drugs/types, vasoconstrictors, dosages, toxicity);
  - C) Recordkeeping;
  - D) Anatomy/Neuroanatomy/Physiology;
  - E) Armamentarium;

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- F) Techniques that include adjunctive use of topical anesthetics, mandibular block and infiltration;
- G) Complications;
- H) Post-operative instructions; and
- I) Clinical experience that includes combining techniques for quadrant anesthesia and practical use of different techniques in all areas of oral cavity.
- 3) A dental hygienist who was licensed in another state and was authorized to administer local anesthesia in that jurisdiction will not be required to complete an additional course. Proof shall be submitted to the dentist and shall be made available to the Department upon request.
- g) The licensed dentist need not be present in the facility for a dental hygienist to perform the procedures set forth in this Section (except for the administration and monitoring of nitrous oxide and the administration of local anesthetics, which must be done under the direction and supervision of a dentist as outlined in subsection (e)(1)) on persons who reside in a long-term care facility licensed by the State of Illinois or a mental health or developmental disability facility operated by the Department of Mental Health and Developmental Disabilities hospital or other similar institution and are unable to travel to a dental office because of illness or infirmity. The dentist shall personally examine and diagnose the patient and determine which services are necessary to be performed, which shall be contained in a written order to the hygienist. Such order must be implemented within 90 days of its issuance and an updated medical history and oral inspection must be performed by the hygienist immediately prior to beginning the procedures to ensure that the patient's health has not changed in any manner to warrant a re-examination by the dentist.
- h) All intraoral procedures performed by a dental auxiliary, except those provided for in subsections (b) and (g), must be examined by the supervising dentist prior to the dismissal of the patient from the facility that day.

(Source: Amended at 25 Ill. Reg. 109013 effective \_\_\_\_\_)

## Section 1220.245 Prescribed Duties of Dental Assistants

- a) "Dental Assistant" means an appropriately trained person who, under the supervision of a dentist, provides dental services or procedures as authorized by Section 17 of the Illinois Dental Practice Act or as prescribed by this Part. "Appropriately trained" means a person who:
- 1) Has completed formal training as a condition for administering a specific service or procedure as required by the Illinois Dental Practice Act or this Part; and

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- 2) Is considered, for all other authorized or prescribed services or procedures, by the supervising dentist to be competent to render such service or procedure as a result of on-the-job training.
- b) Provided that a dental assistant is appropriately trained pursuant to this Section and is acting under the supervision and full responsibility of a dentist, a dental assistant may perform any dental service or procedure except the following:
- 1) Any and all diagnosis of or prescription for treatment of disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws, or adjacent structures.
  - 2) Removal of, restoration of, or addition to the hard or soft tissues of the oral cavity. For purposes of this Section, coronal polishing and acid etching of a tooth surface are not considered removal of hard or soft tissues.
  - 3) Any and all correction of malformation of teeth or of the jaws.
  - 4) Administration of anesthetics except for topical anesthetics and monitoring of nitrous oxide as specified in this Section.
  - 5) Removal of calculus from teeth.
  - 6) Taking of final impressions for the fabricating of prosthetic appliances, crowns, bridges, inlays, onlays, or other restorative or replacement dentistry.
  - 7) The operative procedure of dental hygiene consisting of oral prophylactic procedures except for coronal polishing as specified in this Section.
  - 8) Making denture adjustments.
  - 9) Condensing or carving amalgam restorations.
  - 10) Placing and finishing composite restorations.
  - 11) Permanently cementing permanent crowns or bridges.
  - 12) Permanently re-cementing permanent crowns or bridges that have come loose.
  - 13) Placement of any chemotherapeutic agent for the management of periodontal disease.
  - 14) Applying cavity bases.
  - 15) Cementing bands and/or bonding brackets.
  - 16) Performing supragingival or subgingival scaling.
  - 17) Performing pulp vitality tests.
- c) A dental assistant, who is at least 18 years of age and has 1000 hours of clinical dental assisting experience or has graduated from a dental assistant program accredited by the Commission on Dental Accreditation of the American Dental Association, or is a currently certified dental assistant as designated by the Dental Assisting National Board, Inc., may perform the following services and procedures, but only under the following terms and conditions:
- 1) Monitoring nitrous oxide, provided:
    - A) The dental assistant has completed an approved course of 12 hours relative to nitrous oxide analgesia and has submitted certification to the dentist of valid completion of such

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

course. Such course shall have been completed no earlier than January 1, 1998. Proof shall be made available to the Department upon request. The required hours shall include both didactic and clinical components and have been designed by an educational institution such as a dental school, dental hygiene or dental association program or by an approved CE sponsor and include areas of anatomy, physiology, pharmacology and dental emergencies. Courses being offered by CE sponsors approved pursuant to Section 1220.440(b)(2)(N) must be preapproved by the Department prior to their initial offering and must meet the requirements set forth in this subsection (c)(1). In addition to the required hours, the assistant must be currently certified in CPR;

- B) The dental assistant is functioning under the supervision of the dentist who remains in the facility;
- C) Only a dentist or dental hygienist qualified pursuant to Section 1220.240(e) shall administer (start the flow of) nitrous oxide to the patient and control the induction of the gas so that the patient is at a level of analgesia, not anesthesia;
- D) Only a dentist or dental hygienist qualified pursuant to Section 1220.240(e) shall remove the patient from nitrous oxide when the dentist or dental hygienist has completed the procedures on the patient.

## 2) Coronal polishing, provided:

- A) The dental assistant has completed an approved course of 6 hours relative to coronal polishing and has submitted certification of successful completion to the dentist. Such course shall have been completed no earlier than January 1, 1998. Proof shall be made available to the Department upon request. The required hours shall include a minimum of 4 hours of didactic study in areas of anatomy, physiology, pharmacology and dental emergencies and 2 hours of clinical instruction and have been provided by an educational institution such as a dental school, dental hygiene or dental assistant program or by an approved CE sponsor. Courses being offered by CE sponsors approved pursuant to Section 1220.440(b)(2)(N) must be preapproved by the Department prior to their initial offering and must meet the requirements set forth in this subsection (c)(2). The assistant must pass an examination in the didactic portion of the course and the clinical portion must contain experience on human subjects;
- B) Coronal polishing shall be limited to polishing the clinical crown of the tooth and existing restoration, supragingivally;

## DEPARTMENT OF PROFESSIONAL REGULATION

## NOTICE OF ADOPTED AMENDMENTS

- C) Coronal polishing shall be limited to the use of slow speed rotary instruments using a rubber cup and/or brush polishing method. The use of air polish by dental assistants is not permitted; and
  - D) A dentist shall be limited to supervising four dental assistants at any one time for the task of coronal polishing.
- 3) Pit and fissure sealant application, provided:
- A) The dental assistant has completed a course of at least 2 hours of didactic study and 2 hours of clinical instruction;
  - B) Prior to being permitted to place sealants in accord with this Section, the supervising dentist has personally observed the dental assistant successful place 6 pit and fissure sealants;
  - C) The supervising dentist must document that the training has been completed; and
  - D) The supervising dentist is responsible for examining the patient prior to and following the placement of sealants by a dental assistant.
- d) An individual who graduated from an approved dental assisting program after January 1, 1999 that contained monitoring of nitrous oxide, coronal polishing, and sealant application in the curriculum shall not be required to complete an additional course or courses in these areas as prescribed in this Section upon proof to the dentist of having successfully completed the required curriculum.
  - e) All intraoral procedures performed by a dental assistant must be examined by the supervising dentist prior to the dismissal of the patient from the facility that day.

(Source: Amended at 25 Ill. Reg. 10301, effective \_\_\_\_\_)

## Section 1220.530 Anesthesia Review Panel (Repealed)

(Source: Repealed at 25 Ill. Reg. 11001, effective \_\_\_\_\_)



## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

- 1) Heading of the Part: Mail Order Contact Lens Act
- 2) Code Citation: 68 Ill. Adm. Code 1215
- 3) Section Numbers:

1215.10	New Section
1215.20	New Section
1215.30	New Section
1215.40	New Section
1215.50	New Section
1215.60	New Section
1215.70	New Section
- 4) Statutory Authority: Implementing the Mail Order Contact Lens Act [225 ILCS 83]
- 5) Effective Date of Rules: August 13, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these rules contain incorporations by reference? Yes
- 8) A copy of the adopted rules, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Date Notice of Proposal Published in Illinois Register: September 1, 2000, at 24 Ill. Reg. 13188
- 10) Has JCAR issued a Statement of Objection to these rules? No
- 11) Differences between proposal and final version: No substantive differences
- 12) Have all the changes agreed upon by the Agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will these rules replace emergency rules currently in effect? No
- 14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Rules: Public Act 91-421, effective January 1, 2000, provides for the registration of mail order ophthalmic providers located outside of Illinois providing contact lenses to Illinois residents by the Department of Professional Regulation; these rules will allow the Department to begin accepting and processing registration applications.

Section 1215.20 sets forth the requirements for applicants to register.

## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

The rules also set forth procedures on record retention, for renewal of a registration and under what circumstances the Director of the Department may grant variances to these rules. Acts constituting violations of the Act have been set forth in Section 1215.60.

Fees for registration and renewal as well as general processing fees are set forth in Section 1215.30.

- 16) Information and questions regarding these adopted rules shall be directed to:

Department of Professional Regulation  
 Attention: Jean Courtney  
 320 West Washington, 3rd Floor  
 Springfield, Illinois 62786  
 217/785-0813  
 Fax: 217/782-7645

The full text of the adopted rules begins on the next page:

## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

TITLE 68: PROFESSIONS AND OCCUPATIONS  
 CHAPTER VII: DEPARTMENT OF PROFESSIONAL REGULATIONS  
 SUBCHAPTER b: PROFESSIONS AND OCCUPATIONS

## PART 1215

## MAIL ORDER CONTACT LENS ACT

## Section

1215.10 Definitions  
 1215.20 Registration  
 1215.30 Fees  
 1215.40 Renewals  
 1215.50 Records  
 1215.60 Violations  
 1215.70 Granting Variances

AUTHORITY: Implementing the Mail Order Contact Lens Act [225 ILCS 83] and authorized by Section 60(7) of the Civil Administrative Code of Illinois [20 ILCS 2105/2105-60].

SOURCE: Adopted at 25 Ill. Reg. 109112, effective

## Section 1215.10 Definitions

"Act" shall mean the Mail Order Contact Lens Act [225 ILCS 83].

"Department" means the Illinois Department of Professional Regulation.

"Mail order ophthalmic provider" means an entity located outside of Illinois who dispenses contact lenses to Illinois residents via the United States Postal Service, the Internet or other common carrier.

"Prescriber" means a physician licensed to practice medicine in all of its branches under the Medical Practice Act of 1987 [225 ILCS 60] or an optometrist licensed under the Illinois Optometric Practice Act of 1987 [225 ILCS 80].

## Section 1215.20 Registration

a) An entity required to register as a mail order ophthalmic provider shall submit an application to the Department, on forms supplied by the Department. The application shall include the following:

1) Certification and disclosure:

A) That the entity is licensed or registered to distribute contact lenses in the state in which the dispensing facility is located and from which the contact lenses are dispensed, if required.

## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

- B) Of the location, names, and titles of all principal corporate officers and the person who is responsible for overseeing the dispensing of contact lenses to residents in this State.
- C) That it complies with all lawful directions and appropriate requests for information from the appropriate agency of each state in which it is licensed or registered.
- D) That it will respond directly to all communications from the Department concerning emergency circumstances arising from the dispensing of contact lenses to residents of this State.
- E) That it maintains records of contact lenses dispensed to residents of this State so the records are readily retrievable.
- F) That it will cooperate with the Department in providing information to the appropriate agency of the state in which it is licensed or registered concerning matters related to the dispensing of contact lenses to residents of this State.
- G) That it conducts business in a manner that conforms with Section 10 of the Act and this Part.
- H) That it provides a toll-free telephone service responding to patient questions and complaints during its regular hours of operation. The toll-free number shall be included in literature provided with mailed contact lenses. All questions relating to eye care for the lenses prescribed shall be referred back to the contact lens prescriber.
- I) That it provides the following or a substantially equivalent written notification to the patient whenever contact lenses are supplied:

WARNING: IF YOU ARE HAVING ANY OF THE FOLLOWING SYMPTOMS REMOVE YOUR LENS IMMEDIATELY AND CONSULT YOUR EYE CARE PRACTITIONER BEFORE WEARING YOUR LENSES AGAIN: UNEXPLAINED EYE DISCOMFORT, WATERING, VISION CHANGE, OR REDNESS.

- 2) The required fee set forth in Section 1215.30.
- b) When the address or name of a facility is changed, the registrant shall be required to notify the Department, obtain a corrected registration and pay the required fee set forth in Section 1215.30.

## Section 1215.30 Fees

a) Application Fees

The fee for application for original registration as a non-resident mail order ophthalmic provider shall be \$1000.

b) Renewal Fees

The fee for renewal of a registration of a non-resident mail order ophthalmic provider shall be \$1000 per year.

c) General Fees

## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

- 1) The fee for issuance of a duplicate registration certification or for the re-issuance of a replacement registration certificate, which has been lost or destroyed, is \$50.
- 2) The fee for issuance of a registration certificate with a change of address other than during the renewal period is \$50.
- 3) The fee for the certification of registration for any purpose is \$50.
- 4) The fee for a roster of persons registered under the Act is the actual cost of producing the roster.

**Section 1215.40 Renewals**

- a) The first renewal period for registration issued under the Act shall end March 31, 2002 and subsequent renewal periods shall end every March 31 thereafter. The holder of a registration may renew that registration 60 days prior to the expiration date by filing an application with the Department and paying the required fee set forth in Section 1215.30.
- b) It is the responsibility of each registrant to notify the Department of any change of mailing address. Failure to receive a renewal form from the Department shall not constitute an excuse for failure to pay the renewal fee or to renew one's registration.

**Section 1215.50 Records**

Records of prescriptions filled must be maintained for 3 years, including original copies of the prescription or records of the electronic transmissions.

**Section 1215.60 Violations**

The Department may refuse to issue, renew, or restore a registration, or may revoke, suspend, place on probation, reprimand, impose a fine not to exceed \$5,000 for each violation, or take other disciplinary action as the Department may deem proper with regard to a registrant for any one or combination of the following reasons:

- a) Dispense contact lenses into Illinois without a prescription as required by the Act.
- b) Dispense contact lenses into Illinois beyond the stated expiration date of the prescription.
- c) Fill a prescription in excess of the quantities or frequency stated.
- d) Fill a prescription other than exactly as written without the express approval of the prescriber.
- e) Fill a prescription without the full name, address and phone number of the prescribing doctor on the original copy of the prescription or in the record if electronically transmitted and also displayed on the prescription package along with the required warning notice.
- f) Advertise to the citizens of Illinois the availability of goods or services that if provided would violate the Act, the Illinois

## DEPARTMENT OF PROFESSIONAL REGULATIONS

## NOTICE OF ADOPTED RULES

Optometric Practice Act of 1987 or the Illinois Medical Practice Act of 1987.

**Section 1210.70 Granting Variances**

- a) The Director of the Department may grant variances from this Part in individual cases when he/she finds that:
  - 1) The provision from which the variance is granted is not statutorily mandated;
  - 2) No party will be injured by the granting of the variance; and
  - 3) The rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.
- b) The Director shall notify the Illinois Optometric Licensing and Disciplinary Board and the Medical Licensing Board of the granting of the variance, and the reasons for the variance, at the next meeting of the boards.



DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Retailers' Occupation Tax
- 2) Code Citation: 86 Ill. Adm. Code 130
- 3) Section Numbers:  
130.351      Adopted Action:  
130.2075      Amendment  
130.2076      New Section
- 4) Statutory Authority: 35 ILCS 120
- 5) Effective Date of Amendments: August 13, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Do these amendments contain incorporations by reference? No
- 8) A copy of the adopted amendments, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register:  
05/11/01, 25 Ill. Reg. 6108  
07/16/01, 25 Ill. Reg. 6446  
05/25/01, 25 Ill. Reg. 6645
- 10) Has JC&R issued a Statement of Objections to these Amendments? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JC&R. The changes made were grammar and punctuation or technical. No substantive changes were made. This is a consolidated rulemaking with 2 sections being amended and adding 1 new section.
- 12) Have all the changes agreed upon by the agency and JC&R been made as indicated in the agreement letter issued by JC&R? Yes
- 13) Will these amendments replace emergency amendments currently in effect?  
No
- 14) Are there any amendments pending on this Part? Yes

<u>Section Numbers</u>	<u>Proposed Action</u>	<u>IL Register Citation</u>
130.401	Amendment	12/29/01, 24 Ill. Reg. 19030
130.1501	Amendment	07/06/01, 25 Ill. Reg. 8116
130.1505	Amendment	07/06/01, 25 Ill. Reg. 8116

DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

- 15) Summary and Purpose of Amendments: Section 130.351: This rulemaking amends the regulations pertaining to Aggregate Manufacturing by providing that roof bolt supports and side rib bolt supports that prevent mine collapse are equipment exempt from tax.  
  
Section 130.2075: This rulemaking amends the regulation pertaining to Sales to Construction Contractors, Real Estate Developers and Speculative Builders by deleting an incorrect example and adding a correct example illustrating how a construction contractor purchasing tangible personal property for conversion into real estate and for resale over-the-counter may certify to his vendor that he is buying all of such property for resale and thereafter account to the department for the tax. In these situations, the construction contractor assumes the liability for reporting and paying State Retailers' Occupation Tax and local Retailers' Occupation Tax, if applicable, for the benefit of the entity in which the place of business at or from which the contractor handling the transaction is located, if such entity has adopted a local Retailers' Occupation Tax at the time when the contractor converts the tangible personal property in question into real estate.  
  
Section 130.2076: This rulemaking adds a new Section that provides that sales of tangible personal property to a purchaser who is a government contractor and who will resell such property to a governmental body as part of a contract with the governmental body are exempt from Retailers' Occupation Tax as sales for resale if certain requirements are met.
- 16) Information and questions regarding these adopted amendments shall be directed to:  
  
Jerilynn T. Gorden  
Senior Counsel - Sales and Excise Tax  
Melanie A. Jarvis  
Associate Counsel  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

The full text of the adopted amendments begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUEPART 130  
RETAILERS' OCCUPATION TAX

## SUBPART A: NATURE OF TAX

Section	
130.101	Character and Rate of Tax
130.105	Responsibility of Trustees, Receivers, Executors or Administrators
130.110	Occasional Sales
130.111	Sale of Used Motor Vehicles by Leasing or Rental Business
130.115	Habitual Sales
130.120	Nontaxable Transactions

## SUBPART B: SALE AT RETAIL

Section	
130.201	The Test of a Sale at Retail
130.205	Sales for Transfer Incident to Service
130.210	Sales of Tangible Personal Property to Purchasers for Resale
130.215	Further Illustrations of Sales for Use or Consumption Versus Sales for Resale
130.220	Sales to Lessors of Tangible Personal Property
130.225	Drop Shipments

## SUBPART C: CERTAIN STATUTORY EXEMPTIONS

Section	
130.305	Farm Machinery and Equipment
130.310	Food, Drugs, Medicines and Medical Appliances
130.315	Fuel Sold for Use in Vessels on Rivers Bordering Illinois
130.320	Gasohol
130.321	Fuel Used by Air Common Carriers in International Flights
130.325	Graphic Arts Machinery and Equipment Exemption
130.330	Manufacturing Machinery and Equipment
130.331	Manufacturer's Purchase Credit
130.332	Automatic Vending Machines that Dispense Hot Food or Beverages
130.335	Pollution Control Facilities
130.340	Rolling Stock
130.345	Oil Field Exploration, Drilling and Production Equipment
130.350	Coal Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
130.351	Aggregate Manufacturing

## SUBPART D: GROSS RECEIPTS

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

Section	
130.401	Meaning of Gross Receipts
130.405	How to Avoid Paying Tax on State or Local Tax Passed on to the Purchaser
130.410	Cost of Doing Business Not Deductible
130.415	Transportation and Delivery Charges
130.420	Finance or Interest Charges--Penalties--Discounts
130.425	Traded-In Property
130.430	Deposit or Prepayment on Purchase Price
130.435	State and Local Taxes Other Than Retailers' Occupation Tax
130.440	Penalties
130.445	Federal Taxes
130.450	Installation, Alteration and Special Service Charges
130.455	Motor Vehicle Leasing and Trade-In Allowances

## SUBPART E: RETURNS

Section	
130.501	Monthly Tax Returns--When Due--Contents
130.502	Quarterly Tax Returns
130.505	Returns and How to Prepare
130.510	Annual Tax Returns
130.515	First Return
130.520	Final Returns When Business is Discontinued
130.525	Who May Sign Returns
130.530	Returns Covering More Than One Location Under Same Registration--Separate Returns for Separately Registered Locations
130.535	Payment of the Tax, Including Quarter Monthly Payments in Certain Instances
130.540	Returns on a Transaction by Transaction Basis
130.545	Registrants Must File a Return for Every Return Period
130.550	Filing of Returns for Retailers by Suppliers Under Certain Circumstances
130.551	Prepayment of Retailers' Occupation Tax on Motor Fuel
130.555	Vending Machine Information Returns
130.560	Verification of Returns

## SUBPART F: INTERSTATE COMMERCE

Section	
130.601	Preliminary Comments
130.605	Sales of Property Originating in Illinois
130.610	Sales of Property Originating in Other States

## SUBPART G: CERTIFICATE OF REGISTRATION

Section	
130.701	General Information on Obtaining a Certificate of Registration

DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

130.705 Procedure in Disputed Cases Involving Financial Responsibility Requirements  
130.710 Procedure When Security Must be Forfeited  
130.715 Sub-Certificates of Registration  
130.720 Separate Registrations for Different Places of Business of Same Taxpayer Under Some Circumstances Display  
130.725 Replacement of Certificate  
130.730 Certificate Not Transferable  
130.735 Certificate Required For Mobile Vending Units  
130.740 Revocation of Certificate  
130.745

SUBPART H: BOOKS AND RECORDS

Section  
130.801 General Requirements  
130.805 What Records Constitute Minimum Requirement  
130.810 Records Required to Support Deductions  
130.815 Preservation and Retention of Records  
130.820 Preservation of Books During Pendency of Assessment Proceedings  
130.825 Department Authorization to Destroy Records Sooner Than Would Otherwise be Permissible

SUBPART I: PENALTIES AND INTEREST

Section  
130.901 Civil Penalties  
130.905 Interest  
130.910 Criminal Penalties

SUBPART J: BINDING OPINIONS

Section  
130.1001 When Opinions from the Department are Binding

SUBPART K: SELLERS LOCATED ON, OR SHIPPING TO, FEDERAL AREAS

Section  
130.1101 Definition of Federal Area  
130.1105 When Deliveries on Federal Areas Are Taxable  
130.1110 No Distinction Between Deliveries on Federal Areas and Illinois Deliveries Outside Federal Areas

SUBPART L: TIMELY MAILING TREATED AS TIMELY FILING AND PAYING

Section  
130.1201 General Information  
130.1205 Due Date that Falls on Saturday, Sunday or a Holiday

DEPARTMENT OF REVENUE  
NOTICE OF ADOPTED AMENDMENTS

SUBPART M: LEASED PORTIONS OF LESSOR'S BUSINESS SPACE

Section  
130.1301 When Lessee of Premises Must File Return for Leased Department  
130.1305 When Lessor of Premises Should File Return for Business Operated on Leased Premises  
130.1310 Meaning of "Lessor" and "Lessee" in this Regulation

SUBPART N: SALES FOR RESALE

Section  
130.1401 Seller's Responsibility to Determine the Character of the Sale at the Time of the Sale  
130.1405 Seller's Responsibility to Obtain Certificates of Resale and Requirements for Certificates of Resale  
130.1410 Requirements for Certificates of Resale (Repealed)  
130.1415 Resale Number---When Required and How Obtained  
130.1420 Blanket Certificate of Resale (Repealed)

SUBPART O: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section  
130.1501 Claims for Credit---Limitations--Procedure  
130.1505 Disposition of Credit Memoranda by Holders Thereof  
130.1510 Refunds  
130.1515 Interest

SUBPART P: PROCEDURE TO BE FOLLOWED UPON SELLING OUT OR DISCONTINUING BUSINESS

Section  
130.1601 When Returns are Required After a Business is Discontinued  
130.1605 When Returns Are Not Required After Discontinuation of a Business  
130.1610 Cross Reference to Bulk Sales Regulation

SUBPART Q: NOTICE OF SALES OF GOODS IN BULK

Section  
130.1701 Bulk Sales: Notices of Sales of Business Assets

SUBPART R: POWER OF ATTORNEY

Section  
130.1801 When Powers of Attorney May be Given  
130.1805 Filing of Power of Attorney With Department  
130.1810 Filing of Papers by Agent Under Power of Attorney

SUBPART S: SPECIFIC APPLICATIONS



## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

Section	Addition Agents to Plating Baths
130.1901	Agricultural Producers
130.1905	Antiques, Curios, Art Work, Collectors' Coins, Collectors' Postage
130.1910	Stamps and Like Articles
	Auctioneers and Agents
130.1915	Barbers and Beauty Shop Operators
130.1920	Blacksmiths
130.1925	Chiropractors, Osteopaths and Chiropractors
130.1930	Computer Software
130.1935	Construction Contractors and Real Estate Developers
130.1940	Co-operative Associations
130.1945	Dentists
130.1950	Enterprise Zones
130.1951	Sales of Building Materials to a High Impact Business
130.1952	Farm Chemicals
130.1955	Finance Companies and Other Lending Agencies -- Installment
130.1960	Contracts -- Bad Debts
	Florists and Nurserymen
130.1965	Hatcheries
130.1970	Sellers of Pets and the Like
130.1971	Operators of Games of Chance and Their Suppliers
130.1975	Optometrists and Opticians
130.1980	Pawnbrokers
130.1985	Peddlers, Hawkers and Itinerant Vendors
130.1990	Personalizing Tangible Personal Property
130.1995	Persons Engaged in the Printing, Graphic Arts or Related
130.2000	Occupations, and Their Suppliers
	Sales to Nonprofit Arts or Cultural Organizations
130.2004	Persons Engaged in Nonprofit Service Enterprises and in Similar
130.2005	Enterprises Operated As Businesses, and Suppliers of Such Persons
	Sales by Teacher-Sponsored Student Organizations
130.2006	Exemption Identification Numbers
130.2007	Sales by Nonprofit Service Enterprises
130.2008	Personal Property Purchased Through Certain Fundraising Events for
130.2009	the Benefit of Certain Schools
	Persons Who Rent or Lease the Use of Tangible Personal Property to
130.2010	Others
	Sales to Persons Who Lease Tangible Personal Property to Exempt
130.2011	Hospitals
130.2012	Sales to Persons Who Lease Tangible Personal Property to
	Governmental Bodies
130.2015	Persons Who Repair or Otherwise Service Tangible Personal Property
130.2020	Physicians and Surgeons
130.2025	Picture-Framers
130.2030	Public Amusement Places
130.2035	Registered Pharmacists and Druggists
130.2040	Retailers of Clothing

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

130.2045	Retailers on Premises of the Illinois State Fair, County Fairs, Art Shows, Flea Markets and the Like
130.2050	Sales and Gifts By Employers to Employees
130.2055	Sales by Governmental Bodies
130.2060	Sales of Alcoholic Beverages, Motor Fuel and Tobacco Products
130.2065	Sales of Automobiles for Use in Demonstration (Repealed)
130.2070	Sales of Containers, Wrapping and Packing Materials and Related Products
130.2075	Sales To Construction Contractors, Real Estate Developers and Speculative Builders
130.2076	Sales to Purchasers Performing Contracts with Governmental Bodies
130.2080	Sales to Governmental Bodies, Foreign Diplomats and Consular Personnel
130.2085	Sales to or by Banks, Savings and Loan Associations and Credit Unions
130.2090	Sales to Railroad Companies
130.2095	Sellers of Gasohol, Coal, Coke, Fuel Oil and Other Combustibles
130.2100	Sellers of Feeds and Breeding Livestock
130.2105	Sellers of Newspapers, Magazines, Books, Sheet Music and Recordings, and Their Suppliers; Transfers of Data Downloaded Electronically
130.2110	Sellers of Seeds and Fertilizer
130.2115	Sellers of Machinery, Tools and Special Order Items
130.2120	Suppliers of Persons Engaged in Service Occupations and Professions
130.2125	Trading Stamps and Discount Coupons
130.2130	Undertakers and Funeral Directors
130.2135	Vending Machines
130.2140	Vendors of Curtains, Slip Covers, Floor Covering and Other Similar Items Made to Order
130.2145	Vendors of Meals
130.2150	Vendors of Memorial Stones and Monuments
130.2155	Vendors of Signs
130.2156	Vendors of Steam
130.2160	Vendors of Tangible Personal Property Employed for Premiums, Advertising, Prizes, Etc.
130.2165	Veterinarians
130.2170	Warehousemen

## ILLUSTRATION A Examples of Tax Exemption Cards

AUTHORITY: Implementing the Illinois Retailers' Occupation Tax Act [35 ILCS 120] and authorized by Section 39b3 of the Civil Administrative Code of Illinois [20 ILCS 2505/39b3].

SOURCE: Adopted July 1, 1933; amended at 2 Ill. Reg. 50, p. 71, effective December 10, 1978; amended at 3 Ill. Reg. 12, p. 4, effective March 19, 1979; amended at 3 Ill. Reg. 13, pp. 93 and 95, effective March 25, 1979; amended at 3 Ill. Reg. 23, p. 164, effective June 3, 1979; amended at 3 Ill. Reg. 25, p. 229, effective June 17, 1979; amended at 3 Ill. Reg. 44, p. 193, effective

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

October 19, 1979; amended at 3 Ill. Reg. 46, p. 52, effective November 2, 1979; amended at 4 Ill. Reg. 24, pp. 520, 539, 564 and 571, effective June 1, 1980; amended at 5 Ill. Reg. 818, effective January 2, 1981; amended at 5 Ill. Reg. 3014, effective March 11, 1981; amended at 5 Ill. Reg. 12782, effective November 2, 1981; amended at 6 Ill. Reg. 2860, effective March 3, 1982; amended at 6 Ill. Reg. 6780, effective May 24, 1982; codified at 6 Ill. Reg. 8229; recodified at 6 Ill. Reg. 8999; amended at 6 Ill. Reg. 15225, effective December 3, 1982; amended at 7 Ill. Reg. 7990, effective June 15, 1983; amended at 8 Ill. Reg. 5319, effective April 11, 1984; amended at 8 Ill. Reg. 19062, effective September 26, 1984; amended at 10 Ill. Reg. 1937, effective January 10, 1986; amended at 10 Ill. Reg. 12067, effective July 1, 1986; amended at 10 Ill. Reg. 19538, effective November 5, 1986; amended at 11 Ill. Reg. 4325, effective March 2, 1987; amended at 11 Ill. Reg. 6252, effective March 20, 1987; amended at 11 Ill. Reg. 18284, effective October 27, 1987; amended at 11 Ill. Reg. 18767, effective October 28, 1987; amended at 11 Ill. Reg. 19138, effective October 29, 1987; amended at 11 Ill. Reg. 19696, effective November 23, 1987; amended at 12 Ill. Reg. 5652, effective March 15, 1988; emergency amendment at 12 Ill. Reg. 14401, effective September 1, 1988, for a maximum of 150 days, modified in response to an objection of the Joint Committee on Administrative Rules at 12 Ill. Reg. 19531, effective November 4, 1988, not to exceed the 150 day time limit of the original rulemaking; emergency expired January 29, 1989; amended at 13 Ill. Reg. 11824, effective June 29, 1989; amended at 14 Ill. Reg. 241, effective December 21, 1989; amended at 14 Ill. Reg. 872, effective January 1, 1990; amended at 14 Ill. Reg. 15463, effective September 10, 1990; amended at 14 Ill. Reg. 16028, effective September 18, 1990; amended at 15 Ill. Reg. 6621, effective April 17, 1991; amended at 15 Ill. Reg. 13542, effective August 30, 1991; amended at 15 Ill. Reg. 15757, effective October 15, 1991; amended at 16 Ill. Reg. 1642, effective January 13, 1992; amended at 17 Ill. Reg. 860, effective January 11, 1993; amended at 17 Ill. Reg. 18142, effective October 4, 1993; amended at 17 Ill. Reg. 19651, effective November 2, 1993; amended at 18 Ill. Reg. 1537, effective January 13, 1994; amended at 18 Ill. Reg. 16866, effective November 7, 1994; amended at 19 Ill. Reg. 13446, effective September 12, 1995; amended at 19 Ill. Reg. 13568, effective September 11, 1995; amended at 19 Ill. Reg. 13968, effective September 18, 1995; amended at 20 Ill. Reg. 428, effective March 4, 1996; amended at 20 Ill. Reg. 5366, effective March 26, 1996; amended at 20 Ill. Reg. 6991, effective May 7, 1996; amended at 20 Ill. Reg. 9116, effective July 2, 1996; amended at 20 Ill. Reg. 15753, effective December 2, 1996; expedited correction at 21 Ill. Reg. 4052, effective December 2, 1996; amended at 20 Ill. Reg. 16200, effective December 16, 1996; amended at 21 Ill. Reg. 12211, effective August 26, 1997; amended at 22 Ill. Reg. 3097, effective January 27, 1998; amended at 22 Ill. Reg. 11874, effective June 29, 1998; amended at 22 Ill. Reg. 19919, effective October 28, 1998; amended at 22 Ill. Reg. 21642, effective November 25, 1998; amended at 23 Ill. Reg. 9526, effective July 29, 1999; amended at 23 Ill. Reg. 9898, effective August 9, 1999; amended at 24 Ill. Reg. 10713, effective July 7, 2000; emergency amendment at 24 Ill. Reg. 11313, effective July 12, 2000, for a maximum of 150 days; amended at 24 Ill. Reg. 15104, effective October 2, 2000;

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

amended at 24 Ill. Reg. 18376, effective December 1, 2000; amended at 25 Ill. Reg. 941, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1792, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 4674, effective March 15, 2001; amended at 25 Ill. Reg. 4950, effective March 15, 2001; amended at 25 Ill. Reg. 5398, effective April 2, 2001; amended at 25 Ill. Reg. 6515, effective May 3, 2001; amended at 25 Ill. Reg. 6713, effective May 9, 2001; amended at 25 Ill. Reg. 7264, effective May 25, 2001; amended at 25 Ill. Reg. 10917, effective May 25, 2001.

## SUBPART C: CERTAIN STATUTORY EXEMPTIONS

## Section 130.351 Aggregate Manufacturing

a) General. Notwithstanding the fact that the sales may be at retail, the Retailers' Occupation Tax Act does not apply to sales of aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment used for the exploration and mining of mineral deposits and for the manufacture of resultant aggregate products. The exemption also applies to individual replacement parts for aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment. The exemption also applies to equipment and replacement parts purchased for lease if those items are used primarily (more than 50%) in the activities noted above. The exemption does not apply to motor vehicles required to be registered pursuant to the Illinois Vehicle Code [625 ILCS 5].

1) "Aggregate" shall mean any mineral deposit or finished product including but not limited to sand, gravel, stone, clay, industrial minerals, composites or other mineral solids, except coal.

2) This exemption applies only to equipment used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation. Use of the equipment in any other exploration, mining, off highway hauling, processing, maintenance or reclamation will not qualify for this exemption. Excluded from this reduction are motor vehicles required to be registered pursuant to the Illinois Vehicle Code. Special mobile equipment other than motor vehicles may qualify for the exemption if it is used primarily in aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation. This exemption does not include supplies (such as chemicals, rust inhibitors, adhesives and explosives), coolants, lubricants, items of personal apparel (such as gloves, shoes, hats, helmets, coveralls, masks, mask air filters, belts, harnesses or holsters) or fuel of any type.

3) "Aggregate Exploration" means the search for aggregate. Exploration includes, but is not limited to, excavating, dredging, and drilling to locate aggregate deposits.

4) "Mining" means the extraction of aggregate from the earth by

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- underground and surface mining and includes the extraction of aggregate by the mine owner or operator or his nonpurchaser successors from the waste or residue of prior mining.
- 5) "Off Highway Hauling" means carrying or transporting and would include transport of overburden or waste material, including byproduct materials from the processing facility for disposal and aggregate from the aggregate deposit to the processing facility by conveyors or unlicensed vehicles.
- 6) "Processing" means preparation activities performed directly on the aggregate that are necessary for converting aggregate into a finished product so that it is ready for sale. Processing includes, but is not limited to, sizing, crushing, drying and washing.
- 7) "Maintenance" means keeping aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.
- 8) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.
- 9) "Replacement Parts" means parts that are used to replace parts of qualifying equipment that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation equipment.
- 10) "Kits" means commercially packaged sets of parts that are ordered from a manufacturer, inventoried, and sold by a retailer as a single item. An exempt example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.
- b) Exempt Activities. By way of illustration and not limitation, the following activities will be considered to constitute aggregate exploration, mining, off highway hauling, processing or maintenance:
- 1) Aggregate is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the aggregate deposit to be mined, continues with the removal of waste material and with the extraction of the aggregate, continues with the transportation from the aggregate deposit to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material, continues further with the processing of the aggregate, and ends with the stockpiling of the aggregate. By way of illustration and not limitation, the following equipment is exempt:
- A) Equipment used to drill and load holes for blasting material used to fracture aggregate for extraction and to transport the blasting material.
- B) Equipment used to remove overburden and other waste materials from the deposit to be mined.
- C) Equipment used to modify the energy purchased for the surface mining process if the equipment is used to modify the energy for use on exempt equipment.
- D) Pumps, hoses, piping and discharge apparatus, used in the movement or removal of water or to divert water from the active mine area.
- E) Equipment used to load the overburden, waste material or aggregate to be transported to the processing facility into off highway haulage trucks or onto a conveyor system.
- F) Equipment used to extract aggregate from the earth.
- G) Unlicensed off highway haulage trucks or a conveyor system to transport overburden, waste material or aggregate to the processing facility.
- H) Equipment used to backfill, grade, seed, plant or otherwise reclaim previously mined land.
- I) Crushing, screening and other equipment used to beneficiate and size aggregate products.
- J) Tangible personal property used in or for the purpose of temporarily storing aggregate before processing is exempt if the aggregate is ultimately processed for resale and is in fact resold.
- K) Equipment used in an aggregate wash plant to clean the aggregate prior to sale to customers.
- L) Equipment used to blend different grades of aggregate together so that the final product meets customer specifications.
- M) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field.
- 2) Aggregate is produced in an underground mining operation that begins with creating access from the surface to the aggregate deposit to be mined, continues further with the installation of roof supports, continues with the removal of waste material and the extraction of aggregate, continues further with the transportation from the aggregate deposit to the processing facility, continues further with the processing of aggregate and disposal of waste material from the mine and processing facility, and ends with the stockpiling of aggregate. By way of illustration and not limitation, the following equipment is exempt:
- A) Equipment used to create access to the aggregate deposit and load aggregate into conveyor belts, trucks or other conveyances used to transport aggregate from the deposit to the processing operation.
- B) Conveyor belts, trucks or other conveyances used to transport aggregate from the deposit to the processing operation.
- C) The feeder and crusher used to break large pieces of

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- underground and surface mining and includes the extraction of aggregate by the mine owner or operator or his nonpurchaser successors from the waste or residue of prior mining.
- 5) "Off Highway Hauling" means carrying or transporting and would include transport of overburden or waste material, including byproduct materials from the processing facility for disposal and aggregate from the aggregate deposit to the processing facility by conveyors or unlicensed vehicles.
- 6) "Processing" means preparation activities performed directly on the aggregate that are necessary for converting aggregate into a finished product so that it is ready for sale. Processing includes, but is not limited to, sizing, crushing, drying and washing.
- 7) "Maintenance" means keeping aggregate exploration, mining, off highway hauling, processing, maintenance and reclamation equipment in a state of repair and efficiency.
- 8) "Reclamation" means conditioning areas affected by mining operations. Examples of reclamation activities include, but are not limited to, backfilling, grading, seeding and planting.
- 9) "Replacement Parts" means parts that are used to replace parts of qualifying equipment that require periodic replacement. To be considered a replacement part, the part must be purchased for the purpose of being installed and must, in fact, become a physical component part of aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation equipment.
- 10) "Kits" means commercially packaged sets of parts that are ordered from a manufacturer, inventoried, and sold by a retailer as a single item. An exempt example would be a "tire assembly" comprised of the rim, tire, foam filling and valve stem.
- b) Exempt Activities. By way of illustration and not limitation, the following activities will be considered to constitute aggregate exploration, mining, off highway hauling, processing or maintenance:
- 1) Aggregate is produced in a surface mining operation that begins with the clearing of surface obstacles and overburden from the land above the aggregate deposit to be mined, continues with the removal of waste material and with the extraction of the aggregate, continues with the transportation from the aggregate deposit to the processing facility, continues further with the refilling and grading of the mined area with overburden and waste material, continues further with the processing of the aggregate, and ends with the stockpiling of the aggregate. By way of illustration and not limitation, the following equipment is exempt:
- A) Equipment used to drill and load holes for blasting material used to fracture aggregate for extraction and to transport the blasting material.
- B) Equipment used to remove overburden and other waste materials from the deposit to be mined.



## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- aggregate.
- D) Equipment used to modify the energy purchased for the underground mining process if the equipment is used to modify the energy for use on exempt equipment.
- E) Pumps, hoses, piping and discharge apparatus, used in the movement or removal of water or to divert water from the underground mine area.
- F) Equipment used to install roof bolt supports and side rib bolt supports, and scaling prior to roof bolting, to prevent mine collapse.
- G) Equipment used to coat mine walls with inert material for loose rock safety.
- H) Equipment installed as improvements to real estate for mining, such as elevators and rail, ventilating and illuminating systems.
- I) Additions to exempt underground rail conveyors and ventilating and illumination systems due to the progression of mining.
- J) Equipment used to drill and load holes for blasting material used to fracture aggregate for extraction and to transport the blasting material.
- K) Equipment used for transporting aggregate to above-ground facilities.
- L) Tangible personal property used in or for the purpose of temporarily storing aggregate before processing if the aggregate is ultimately processed for resale and is in fact resold.
- M) Equipment used in an aggregate wash plant to clean the aggregate prior to sale to customers.
- N) Equipment used to blend different grades of aggregate together so that the final product meets customer specifications.
- O) Electrical cable that is part of an electrical distribution system supplying electricity to exempt equipment in the field.
- P) Roof bolt supports and side rib bolt supports to prevent mine collapse.
- 3) By way of illustration and not limitation, the following maintenance equipment is exempt:
- A) Unlicensed maintenance and welding trucks used for field repair of exempt equipment.
- B) Lathes, drill presses, air compressors and welders used to attach repair parts.
- C) Mobile and overhead cranes.
- D) Equipment used for dust suppression.
- 4) By way of illustration and not limitation, the following aggregate exploration equipment is exempt unless registered pursuant to the Illinois Vehicle Code:

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- A) Drill rigs used to drill exploration core holes.
- B) Water trucks used in the drilling process.
- C) Winch and casing trucks used in the drilling process.
- D) Field maintenance trucks used to make repairs on field equipment.
- E) Air compressors.
- c) Nonexempt Activities
- By way of illustration and not limitation, the following activities will not be considered to constitute aggregate exploration, mining, off highway hauling, processing or maintenance:
- 1) The use of equipment in the construction, reconstruction, alteration, remodeling, servicing, repairing, maintenance or improvement of real estate except for underground mine structures. Material, such as lumber, steel, concrete, rock and other building materials, will not qualify for the exemption except when used in underground mine structures;
- 2) the use of equipment in research and development for new uses of aggregate;
- 3) the use of equipment, trailers, sheds or structures in management, sales or other nonproduction, nonoperational activities including production of extraction scheduling, purchasing, receiving, accounting, fiscal management, communications, security, marketing, product exhibition and promotion, and personnel recruitment, selection or training;
- 4) the use of equipment to prevent or fight fires or other mining hazards and protective supplies such as face masks, gas masks, helmets, gloves, coveralls, goggles, or first aid equipment and supplies, even though such equipment and supplies may be required by law;
- 5) the use of equipment for general ventilation, heating, cooling, climate control or general illumination not specifically required for the exploration, mining, off highway hauling, processing, maintenance or reclamation operation;
- 6) facilities for storing aggregate after extraction and processing;
- 7) front-end loaders, cranes and equipment used to load aggregate onto trucks, railcars or barges for delivery to customers.
- d) Sales to Lessors of Aggregate Exploration, Mining, Off Highway Hauling, Processing, Maintenance and Reclamation Equipment
- 1) For the exemption to apply, the purchaser need not, himself, employ the equipment in aggregate exploration, mining, off highway hauling, processing, maintenance or production. If the purchaser leases the equipment to a lessee who uses it primarily in a qualified manner, the sale to the purchaser-lessor will be eligible for the exemption. A supplier may exclude such sales from his taxable gross receipts if the purchaser-lessor provides him with a properly completed certificate and the information contained therein would support a reduction if the sale were made directly to the lessee.

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- 2) Should a purchaser-lessor subsequently lease the equipment to a lessee who does not use it primarily in a way that would qualify for the reduction, the purchaser-lessor will become liable for the tax that he previously did not pay. The tax will be assessed upon the fair market value of the equipment at the time of conversion.

## e) Purchaser Certification

Certificates must be executed by the purchaser. The certificate must include the seller's name and address, the purchaser's name and address and a statement that the property purchased will be used primarily for aggregate exploration, mining, off highway hauling, processing, maintenance or reclamation. Sellers may accept blanket certificates, but have the responsibility to obtain and keep all certificates as part of their books and records. If a retailer accepts the certificate and the purchaser does not, in fact, use the equipment in a qualifying manner, the purchaser will be liable to the Department for the tax. Equipment that is initially used primarily in a qualifying manner and, having been so used for less than one-half of its useful life, is converted to nonqualified uses, will become subject to tax at the time of conversion. Replacement parts purchased initially for use in a qualifying manner and used in a nonqualifying use will become subject to tax at the time of use.

(Source: Amended at 25 Ill. Reg. 109172 effective 10/1/72)

## SUBPART S: SPECIFIC APPLICATIONS

## Section 130.2075 Sales To Construction Contractors, Real Estate Developers and Speculative Builders

- a) Sales to Construction Contractors, Real Estate Developers and Speculative Builders -- When Taxable and When Not Taxable
- 1) Persons who engage in selling tools, equipment, fuel, supplies and other tangible personal property to construction contractors, real estate developers or speculative builders for use or consumption incur Retailers' Occupation Tax liability when making such sales. Also, persons who (apart from acting as construction contractors themselves) engage in selling building materials, fixtures, plants and other tangible personal property to construction contractors, speculative builders or real estate developers, who convert such items into real estate so as to take such items off the market as tangible personal property, incur Retailers' Occupation Tax liability when making such sales.
  - 2) When the purchasing construction contractor (whether he is the prime contractor or the subcontractor) buys the item that he will convert into real estate in finished form, the tax base is what such construction contractor pays for the item. When the

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

construction contractor-installer (whether he is the prime contractor or a subcontractor) is also the manufacturer of the finished item that he will incorporate into real estate for his customer, the tax base is what such construction contractor pays for the materials that he incorporates into such finished item, plus whatever such construction contractor may pay for nails, screws or other items of tangible personal property that he buys and incorporates into real estate for his customer in the course of making the installation of the finished item.

- 3) For information as to who qualifies as a construction contractor, see Section 130.1940(a) and (c) of this Part.
- 4) Sales of tangible personal property to construction contractors, real estate developers or speculative builders who resell such property in the form of tangible personal property would not be taxable sales, but the construction contractor, real estate developer or speculative builder would be making taxable resales in this situation (see Section 130.1940(b) and (c) of this Part).

## b) When and How Purchasing Contractor May Certify that He Will Assume Accountability for the Tax-Effect of Such Certification

- 1) When the purchaser of tangible personal property may use such property by converting it into real estate, but may resell such property "over-the-counter" apart from acting as a construction contractor, and where it is impracticable, at the time of purchasing such tangible personal property, for such purchaser to determine in which way he will dispose of the property, such purchaser may certify to his vendor that he is buying all of such tangible personal property for resale and thereafter account to the Department for the tax on disposing of such property.
- 2) The purchaser may not give such certification to his supplier unless the purchaser, if he will convert the tangible personal property into real estate in this State, agrees to, and does, assume the liability for reporting and paying the tax to the Department in the same form (Illinois Retailers' Occupation Tax, and local Retailers' Occupation Tax if applicable) in which the supplier would have reported and paid such tax if the supplier had accounted for the tax to the Department. This means that if the purchaser uses the tangible personal property by converting it into real estate in this State in any manner, he must include the cost price of such tangible personal property in his reported taxable receipts in his return form to the Department and must pay the State Retailers' Occupation Tax along with any other applicable Retailers' Occupation Taxes (not the Use Tax, but the Retailers' Occupation Tax) thereon to the Department, and must pay the Home Rule Municipal or County Retailers' Occupation Tax thereon, if applicable. For example, a contractor who also sells over-the-counter gives this certification when he buys dry-wall from a supplier located in Springfield, Illinois. -- Subsequent--to



## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

~~the purchase--the--contractor--incorporates--some--of--the--dry--wall~~  
~~into--real--estate--on--a--job--the--contractor--must--account--for--the~~  
~~tax--by--paying--the--State--Retailers'--Occupation--Tax--and--the~~  
~~Springfield--Home--Rule--Municipal--Retailers'--Occupation--Tax--on--his~~  
~~return--by--including--the--cost--price--of--the--dry--wall--converted--to~~  
~~real--estate--in--his--taxable--receipts.~~

3) The local Retailers' Occupation Tax to be paid by the contractor or builder in this situation shall be paid for the benefit of the entity in which the place of business at or from which the contractor or builder handles the transaction is located, if such entity has adopted the local Retailers' Occupation Tax at the time when the contractor or builder converts the tangible personal property in question into real estate. For example, a contractor who is registered at a location in Springfield, Illinois, and who also sells "over-the-counter" gives the certification described in subsection (b)(2) of this Section when he buys dry wall from a supplier located in Champaign, Illinois. Subsequent to the purchase, the contractor incorporates some of the dry wall into real estate on a job. The contractor must account for the tax by paying the State Retailers' Occupation Tax and the Springfield Home Rule Municipal Retailers' Occupation Tax on his return by including the cost price of the dry wall converted to real estate in his taxable receipts.

4) Such purchaser, who assumes the responsibility for accounting for the tax, must pay State Retailers' Occupation Tax (plus local Retailers' Occupation Tax, if applicable) on the full selling price of the tangible personal property if he resells the property "over-the-counter" to a user (including a construction contractor) apart from acting as a construction contractor himself.

5) A purchaser of this type would have to be registered with this Department under the Retailers' Occupation Tax Act since he would be incurring some Retailers' Occupation Tax liability, so he would be required to furnish his vendor with his Retailers' Occupation Tax registration number in the certification referred to in subsection (b)(1) of this Section.

6) The tax involved in this Section is State Retailers' Occupation Tax and Use Tax and local Retailers' Occupation Tax, but not State or local Service Occupation Tax or Service Use Tax.

7) Purchasing contractors may not give this certification to make purchases from out-of-enterprise zone (see Section 130.1951 of this Part) retailers with resale certificates and then claim they are retailers entitled to claim the enterprise zone exemption to avoid the tax on sales of building materials.

c) Use Tax on Out-of-State Purchases

Tangible personal property bought outside this State either by Illinois or out-of-State construction contractors or builders in such a way that the seller does not incur Retailers' Occupation Tax

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

liability and used in this State for building purposes is subject to the Use Tax. If the purchaser buys such tangible personal property from an out-of-State seller who is registered with the Department as a Use Tax collector, the purchaser should pay the Use Tax to such seller unless the purchaser is also a retailer and elects to assume responsibility for accounting for all the tax on such materials. If the purchaser buys such materials outside Illinois from an unregistered seller, the purchaser should pay the Use Tax directly to this Department. No local Retailers' Occupation Tax is applicable in this situation.

d) Sales of Materials to Construction Contractors Acting for Exclusively Charitable, Religious or Educational Organizations or Institutions, or for Governmental Bodies

1) Sales of materials to construction contractors for incorporation into real estate owned by exclusively charitable, religious or educational institutions or organizations, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older, or for incorporation into real estate owned by governmental bodies, are exempt from Retailers' Occupation Tax and Use Tax. The intent of the Legislature was to relieve the above-designated kinds of purchasers from the burden of tax on their purchases whether the purchases are made directly or indirectly by these organizations. Therefore, the exemption applies to their indirect purchase of building materials.

2) However, effective March 17, 1965, this exemption does not extend to sales of materials to construction contractors for incorporation into real estate owned by a national bank, a State-chartered bank or a Federally or State-chartered savings and loan association (see Section 130.2085 of this Part). Sales of materials to, and purchases of materials by, such construction contractors are taxable sales and purchases.

3) Also, sales of tools, fuel, lumber for forms and other end use or consumption items to construction contractors who do not incorporate these items into real estate are taxable sales regardless of who the contractor's customer may be, and this has been true since the beginning of the Act.

4) A supplier claiming exemption hereunder shall have among his records a certification from the purchasing contractor stating that his purchases are for conversion into real estate under a contract with a church, charity, school or governmental body, identifying the church, charity, school or governmental body that is involved by name and address and stating on what date his contract was entered into. The supplier shall also have among his records the active exemption number issued by the Department to the organization for which the purchasing contractor is



## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

acting.

- e) Sales of Materials to Construction Contractors for Incorporation into Public Improvements Which are Required to be Transferred to a Unit of Local Government Upon Completion

For the same reason stated in subsection (d) of this Section, sales to construction contractors of materials which will be physically incorporated into public improvements, the ownership of which is required to be conveyed to a unit of local government pursuant to a pre-development transfer requirement are exempt from Retailers' Occupation Tax and Use Tax. The supplier shall have among his records the active registration number issued by the Department to the governmental unit to which the public improvements will be transferred upon completion. The pre-development transfer requirement may take the following forms:

- 1) Where language in the local governmental unit's subdivision ordinance explicitly requires that title to public improvements be transferred to the local governmental unit upon completion, the pre-development transfer requirement is satisfied as to all public improvements (such as roads and streets, sidewalks, sanitary sewer systems and storm water drainage systems) actually required to be transferred under the terms of that ordinance;
- 2) Where language in a pre-development agreement between the local governmental unit and a developer explicitly requires that title to public improvements be transferred to the local governmental unit upon completion, the pre-development transfer requirement is satisfied as to all public improvements actually required to be transferred under the terms of that pre-development agreement;
- 3) Where a plat of subdivision, formally approved by a municipality, has been recorded with the County Recorder of Deeds and where that recorded plat contains a public dedication of improvements, the pre-development transfer requirement is satisfied as to roads and streets located within the corporate limits of the approving municipality and any other improvements located within the corporate limits which are dedicated on the plat to the public use and for no other purpose;
- 4) Where a plat of subdivision, formally approved by a county with fewer than 500,000 inhabitants which has established regulations regarding location, width and course of roads and streets, has been recorded with the County Recorder of Deeds and where that recorded plat contains a public dedication of roads and streets located in the unincorporated area of the approving county, the pre-development transfer requirement is satisfied as to those public roads and streets. In this context, only grading and surface materials which actually become part of the roadbed and materials incorporated into curbs and gutters qualify for the exemption. Other items such as catchbasins, drainage pipe or materials incorporated into sidewalks do not qualify for the exemption.

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

(Source: Amended at 25 Ill. Reg. 10917<sup>a</sup>, effective April 1, 1982.)

### Section 130.2076 Sales to Purchasers Performing Contracts with Governmental Bodies

a) Generally, a government contractor who purchases items to fulfill his obligations under a contract with a governmental unit purchases those items for use. See, U.S. v. New Mexico, 455 U.S. 720, 102 S.Ct. 1373 (1982). However, if the contract with the governmental unit explicitly requires the contractor to sell those items to the governmental unit, the purchase of those items by the contractor can be structured as purchases for the purpose of resale to the governmental unit. Sales of tangible personal property to the contractor in this situation are exempt from Retailers' Occupation Tax as sales for resale if the following conditions are met:

- 1) There is a contract between the purchaser and the governmental body that requires the purchaser to provide tangible personal property to the governmental body.
- 2) The contract is specific in documenting a sale of tangible personal property from the purchaser to the governmental body. The contract must specify that the tangible personal property is transferred to the governmental body. However, the contract does not have to be item specific. For example, a statement that title to all of the tangible personal property that is purchased shall pass to the governmental body is sufficient. The transfer may be immediate or subsequent to the completion of the contract.
- b) The exemption in subsection (a) above applies to tangible personal property that is used or consumed in the performance of a contract with a governmental body and to which title passes to the governmental body under the terms of the contract. For example, the exemption applies to consumable supplies, such as fuel, that a purchaser uses to fulfill the contract with the governmental body so long as the conditions set forth in subsection (a) are met.
- c) A supplier claiming exemption shall have among his records a Certificate of Resale from the purchasing government contractor that conforms to the requirements set forth in Section 130.1405.

(Source: Added at 25 Ill. Reg. 10917<sup>a</sup>, effective April 1, 1982.)

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Use Tax
- 2) Code Citation: 86 Ill. Adm. Code 150
- 3) Section Numbers: Adopted Action:  
150.306 Amendment
- 4) Statutory Authority: 35 ILCS 105
- 5) Effective Date of Amendment: August 13, 2001
- 6) Does this rulemaking contain an automatic repeal date? No
- 7) Does this amendment contain incorporations by reference? No
- 8) A copy of the adopted amendment, including any material incorporated by reference, is on file in the agency's principal office and is available for public inspection.
- 9) Notice of Proposal Published in Illinois Register: May 11, 2001, 25 Ill. Reg. 6122
- 10) Has JCAR issued a Statement of Objections to this Amendment? No
- 11) Differences between proposal and final version: The only changes made were the ones agreed upon with JCAR. The changes made were grammar and punctuation or technical. No substantive changes were made.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreement letter issued by JCAR? Yes
- 13) Will this amendment replace an emergency amendment currently in effect?  
No
- 14) Are there any amendments pending on this Part? No

15) Summary and Purpose of Amendment: This rulemaking provides that the leasing of motor vehicles by motor vehicle dealers is within the interim use exemption if such leased motor vehicles are carried as inventory on the books of the dealers or are otherwise available for sale during the lease period. This rulemaking codifies numerous letter rulings, including ST 99-0277-GIL and ST 00-0004-PUR, which relate to a situation commonly encountered among auto dealers. This rulemaking also provides that the leasing of motor vehicles by automobile manufacturers to their employees is within the interim use exemption if such leased motor vehicles are carried as inventory on the books of the manufacturers or are otherwise available for sale during the lease period.

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

- 16) Information and questions regarding this adopted amendment shall be directed to:

Jerilynn T. Gorden  
Senior Counsel, Sales and Excise Tax  
Illinois Department of Revenue  
Legal Services Office  
101 West Jefferson  
Springfield, Illinois 62794  
Phone: (217) 782-6996

The full text of the adopted amendment begins on the next page:

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

TITLE 86: REVENUE  
CHAPTER I: DEPARTMENT OF REVENUEPART 150  
USE TAX

## SUBPART A: NATURE OF THE TAX

Section	
150.101	Description of the Tax
150.105	Rate and Base of Tax
150.110	How To Compute Depreciation
150.115	How to Determine Effective Date
150.120	Effective Date of New Taxes
150.125	Relation of Use Tax to Retailers' Occupation Tax
150.130	Accounting for the Tax
150.135	How to Avoid Paying Tax on Use Tax Collected From the Purchaser

## SUBPART B: DEFINITIONS

Section	
150.201	General Definitions

## SUBPART C: KINDS OF USES AND USERS NOT TAXED

Section	
150.301	Cross References
150.305	Effect of Limitation that Purchase Must be at Retail From a Retailer to be Taxable
150.306	Interim Use and Demonstration Exemptions
150.310	Exemptions to Avoid Multi-State Taxation
150.315	Non-resident Exemptions
150.320	Meaning of "Acquired Outside This State"
150.325	Charitable, Religious, Educational and Senior Citizens Recreational Organizations as Buyers
150.330	Governmental Bodies as Buyers
150.331	Persons Who Lease Tangible Personal Property to Exempt Hospitals
150.332	Persons Who Lease Tangible Personal Property to Governmental Bodies
150.335	Game or Game Birds Purchased at Game Breeding and Hunting Areas or Exotic Game Hunting Areas
150.336	Fuel Brought into Illinois in Locomotives
150.337	Food, Drugs, Medicines and Medical Appliances When Purchased for Use by a Person Receiving Medical Assistance under the Illinois Public Aid Code

## SUBPART D: COLLECTION OF THE USE TAX FROM USERS BY RETAILERS

Section	
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## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

## Collection of the Tax by Retailers From Users

150.401	Tax Collection Brackets
150.405	Tax Collection Brackets for a 2-1/4% Rate of Tax (Repealed)
150.410	Tax Collection Brackets for a 2-1/2% Rate of Tax (Repealed)
150.415	Tax Collection Brackets for a 2-3/4% Rate of Tax (Repealed)
150.420	Tax Collection Brackets for a 3% Rate of Tax (Repealed)
150.425	Tax Collection Brackets for a 3-1/8% Rate of Tax (Repealed)
150.430	Tax Collection Brackets for a 3-1/4% Rate of Tax (Repealed)
150.435	Tax Collection Brackets for a 3-1/2% Rate of Tax (Repealed)
150.440	Tax Collection Brackets for a 3-3/4% Rate of Tax (Repealed)
150.445	Tax Collection Brackets for a 4% Rate of Tax (Repealed)
150.450	Tax Collection Brackets for a 4-1/8% Rate of Tax (Repealed)
150.455	Tax Collection Brackets for a 4-1/4% Rate of Tax (Repealed)
150.460	Tax Collection Brackets for a 4-1/2% Rate of Tax (Repealed)
150.465	Tax Collection Brackets for a 4-3/4% Rate of Tax (Repealed)
150.470	Tax Collection Brackets for a 5% Rate of Tax (Repealed)
150.475	Tax Collection Brackets for a 5-1/8% Rate of Tax (Repealed)
150.480	Tax Collection Brackets for a 5-1/4% Rate of Tax (Repealed)
150.485	Tax Collection Brackets for a 5-1/2% Rate of Tax (Repealed)
150.490	Tax Collection Brackets for a 5-3/4% Rate of Tax (Repealed)
150.495	Tax Collection Brackets for a 6% Rate of Tax (Repealed)
150.500	Optional 1% Schedule (Repealed)
150.505	Exact Collection of Tax Required When Practicable
150.510	Prohibition Against Retailer's Representing That He Will Absorb The Tax
150.515	Display of Tax Collection Schedule (Repealed)
150.520	Methods for Calculating Tax on Sales of Items Subject to Differing Tax Rates

## SUBPART E: RECEIPT FOR THE TAX

Section	
150.601	Requirements

## SUBPART F: SPECIAL INFORMATION FOR TAXABLE USERS

Section	
150.701	When and Where to File a Return
150.705	Use Tax on Items that are Titled or Registered in Illinois
150.710	Procedure in Claiming Exemption from Use Tax
150.715	Receipt for Tax or Proof of Exemption Must Accompany Application for Title or Registration
150.716	Display Certificates for House Trailers
150.720	Issuance of Title or Registration Where Retailer Fails or Refuses to Remit Tax Collected by Retailer from User
150.725	Direct Payment of Tax by User to Department on Intrastate Purchase Under Certain Circumstances
150.730	Direct Reporting of Use Tax to Department by Registered Retailers



## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

## SUBPART G: REGISTRATION OF OUT-OF-STATE RETAILERS

Section 150.801 When Out-of-State Retailers Must Register and Collect Use Tax  
 150.805 Voluntary Registration by Certain Out-of-State Retailers  
 150.810 Incorporation by Reference

## SUBPART H: RETAILERS' RETURNS

Section 150.901 When and Where to File  
 150.905 Deduction for Collecting Tax  
 150.910 Incorporation by Reference  
 150.915 Itemization of Receipts from Sales and the Tax Among the Different States from Which Sales are Made into Illinois

## SUBPART I: PENALTIES, INTEREST, STATUTE OF LIMITATIONS AND ADMINISTRATIVE PROCEDURES

Section 150.1001 General Information

## SUBPART J: TRADED-IN PROPERTY

Section 150.1101 General Information

## SUBPART K: INCORPORATION OF ILLINOIS RETAILERS' OCCUPATION TAX REGULATIONS BY REFERENCE

Section 150.1201 General Information

## SUBPART L: BOOKS AND RECORDS

Section 150.1301 Users' Records  
 150.1305 Retailers' Records  
 150.1310 Use of Signs to Prove Collection of Tax as a Separate Item  
 150.1315 Consequence of Not Complying with Requirement of Collecting Use Tax Separately from the Selling Price  
 150.1320 Incorporation by Reference

## SUBPART M: CLAIMS TO RECOVER ERRONEOUSLY PAID TAX

Section 150.1401 Claims for Credit--Limitations--Procedure  
 150.1405 Disposition of Credit Memoranda by Holders Thereof

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

150.1410 Refunds  
 150.1415 Interest

## TABLE A Tax Collection Brackets

AUTHORITY: Implementing the Use Tax Act [35 ILCS 105] and authorized by Section 2505-90 of the Civil Administrative Code of Illinois [20 ILCS 2505/2505-90].

SOURCE: Adopted August 1, 1955; amended at 4 Ill. Reg. 24, p. 553, effective June 1, 1980; amended at 5 Ill. Reg. 5351, effective April 30, 1981; amended at 5 Ill. Reg. 11072, effective October 6, 1981; codified at 6 Ill. Reg. 9326; amended at 8 Ill. Reg. 3704, effective March 12, 1984; amended at 8 Ill. Reg. 7278, effective May 11, 1984; amended at 8 Ill. Reg. 8623, effective June 5, 1984; amended at 11 Ill. Reg. 6275, effective March, 20, 1987; amended at 14 Ill. Reg. 6835, effective April 19, 1990; amended at 15 Ill. Reg. 5861, effective April 5, 1991; emergency amendment at 16 Ill. Reg. 14889, effective September 9, 1992, for a maximum of 150 days; amended at 17 Ill. Reg. 1947, effective February 2, 1993; amended at 18 Ill. Reg. 1584, effective January 13, 1994; amended at 20 Ill. Reg. 7019, effective May 7, 1996; amended at 20 Ill. Reg. 16224, effective December 16, 1996; amended at 22 Ill. Reg. 21670, effective November 25, 1998; amended at 24 Ill. Reg. 10728, effective July 7, 2000; amended at 25 Ill. Reg. 953, effective January 8, 2001; emergency amendment at 25 Ill. Reg. 1821, effective January 16, 2001, for a maximum of 150 days; amended at 25 Ill. Reg. 5059, effective March 23, 2001; amended at 25 Ill. Reg. 6540, effective May 3, 2001; amended at 25 Ill. Reg. 10938, effective AUG 1, 2001.

## SUBPART C: KINDS OF USES AND USERS NOT TAXED

## Section 150.306 Interim Use and Demonstration Exemptions

## a) Interim Use Exemption

- 1) Except as provided in subsection (c) of this Section, tangible personal property purchased by a retailer for resale, and used by the retailer or his agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period.
- 2) Except as limited in subsection (c), the leasing of tangible personal property by persons who are primarily engaged in the business of selling such property at retail is within the interim use exemption if such property is carried as inventory on the books of the retailer or is otherwise available for sale during the lease period. Except as to motor vehicles described in subsection (a)(4), the interim use exemption is not available to persons who purchase tangible personal property with the intent to engage in the business of leasing such property and who

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

sell such property only as an incident to their leasing activity. Persons who are primarily engaged in the business of leasing motor vehicles ~~automobiles~~ may not claim an interim use exemption when purchasing motor vehicles ~~automobiles~~ for use in their business even though such lessors are subject to Retailer's Occupation Tax on the sale of used motor vehicles ~~automobiles~~ pursuant to 35 ILCS 120/1c. Motor vehicles of the first division as defined in Section 1-146 of the Illinois Vehicle Code [625 ILCS 5/1-146] are exempt from Use Tax if the vehicles purchased are to be rented under lease terms of one year or less. (See 35 ILCS 105/3-5(10)).

3) In determining whether a taxpayer is "primarily" a retailer, the Department will examine only the activities of his Illinois operations. In addition, the Department will examine the activities of divisions of a corporate entity that are not separately registered with the Department. If divisions of a corporate entity are separately registered, however, their activities will not be examined in making this determination.

4) The leasing of motor vehicles by motor vehicle dealers is within the interim use exemption if the leased motor vehicles are carried as inventory on the books of the dealers or are otherwise available for sale during the lease period. For example, many times motor vehicle dealers enter into leases of motor vehicles with lessees and simultaneously sell both those motor vehicles and leases to third parties. If a motor vehicle dealer enters into a lease of a motor vehicle with a lessee and simultaneously sells that motor vehicle to a third party, the interim use exemption is available to the dealer in regard to the purchase of the motor vehicle when it was purchased by the dealer for lease provided that the motor vehicle is carried as inventory on the books of the dealer or is otherwise available for sale during the lease period. However, the dealer's sale of the motor vehicle, with or without the lease, to the third party is taxable and the third party incurs a Use Tax liability.

5) The leasing of motor vehicles by motor vehicle manufacturers to their employees is within the interim use exemption if the leased motor vehicles are carried as inventory on the books of the manufacturers or are otherwise available for sale during the lease period.

## b) Demonstration Use Exemption

1) Except as provided in subsection (c), tangible personal property purchased for resale and used by its owner for demonstration purposes is not subject to Use Tax.

2) The leasing of tangible personal property by a retailer to prospective buyers for the purpose of allowing them to ascertain whether or not the property suits their particular needs and for the purpose of trying to induce them to buy such property is a use for demonstration purposes, except as provided in subsection

## DEPARTMENT OF REVENUE

## NOTICE OF ADOPTED AMENDMENTS

(c).  
3) The demonstration use exemption may not be claimed for tangible personal property purchased for resale which is consumed or destroyed in order to promote or demonstrate the product available for sale or is given away to a prospective customer as an inducement to make future purchases. For example, a retail grocer offering free samples of pizza to customers in his store in order to promote the sale of a new frozen pizza would not be able to claim a demonstration use exemption on his purchase price of the pizza consumed in the promotion.

4) A vendor may not claim a demonstration use exemption on the use of a competing product, not available for sale by that vendor, even though the vendor uses the competing product to assist in the demonstration of the product which he sells. Nor may a vendor claim a demonstration use exemption on ancillary items used in the demonstration of a product (i.e., a microwave used to heat the pizza samples in the above example). The demonstration use exemption is available only to a vendor of the product being demonstrated.

c) For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay Use Tax on the original cost price of the aircraft or watercraft, and no credit for that tax is permitted if the aircraft or watercraft is subsequently sold by the retailer. For purposes of this Section, the term "watercraft" means a Class 2, Class 3 or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor.

(Source: Amended at 25 Ill. Reg. 10937, effective

JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

STATE BOARD OF EDUCATION

Heading of the Part: Certification

Code Citation: 23 Ill Adm Code 25

Section Numbers: 25.90 25.710 25.735 25.770

Date Originally Published in the Illinois Register: 7/20/01  
25 Ill Reg 9360

At its meeting on August 7, 2001, the Joint Committee on Administrative Rules objected to the emergency rules of the State Board of Education because the only emergency in this instance appears to be an agency-created emergency. The Public Act requiring SBE to adopt rules developing a new set of examinations and procedures for transitional bilingual education certification by 7/1/01 took effect 6/30/99. SBE had 2 years to develop this rulemaking and adopt it through the regular rulemaking process, with its associated opportunity for public comment.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

JOINT COMMITTEE ON ADMINISTRATIVE RULES

NOTICE OF FAILURE TO REMEDY  
DEPARTMENT OF HUMAN SERVICES

1) Heading of Part: Partner Abuse Intervention

2) Code Citation: 89 Ill Adm Code 501

3) Section Numbers: 510.10 510.20 510.30 510.40 Action: Recommendation  
510.50 510.60 510.70 510.80  
510.90 510.100

4) Notice of Proposal published in Illinois Register: 24 Ill Reg 17436 -  
11/27/00

5) Date JCAR issued Statement of Recommendation: 4/17/01

6) Summary of Action taken by the Agency: DHS proposed a rule that established standards for partner abuse intervention programs (PAIPs) that work with individuals who commit domestic violence.

7) JCAR Action: The above cited rulemaking was considered by the Joint Committee at its April 17, 2001 meeting. At that time the Committee voted to issue two Recommendations because DHS had no specific statutory authority to use GRF funds for PAIP grants or to compile and maintain a list of approved PAIPs for use by the courts when sentencing perpetrators of domestic violence. In response to JCAR's Recommendations, DHS disagreed with both Recommendations believing it has sufficient authority for use of GRF funds and for compiling and maintaining a list of approved PAIPs.

As a result of DHS response, the Committee voted to issue this Failure to Remedy at its August 7, 2001 meeting.



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

STATEMENT OF OBJECTION TO  
EMERGENCY RULEMAKING

DEPARTMENT OF REVENUE

Heading of the Part: Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act

Code Citation: 86 Ill Adm Code 530

Section Numbers: 530.101 530.110

Date Originally Published in the Illinois Register: 7/6/01

25 Ill Reg 8449

At its meeting on August 7, 2001, the Joint Committee on Administrative Rules objected to the emergency rules of the Department of Revenue because the addition of an entire class of drugs called polypeptide hormones is outside the scope of Public Act 92-10. Only one polypeptide hormone (calcitonin) is indicated in the treatment of osteoporosis.

Failure of the agency to respond within 90 days after receipt of the Statement of Objection shall be deemed a refusal. The agency's response will be placed on the JCAR agenda for further consideration.

OFFICE OF BANKS AND REAL ESTATE

NOTICE OF PUBLIC INFORMATION

NOTICE OF FINE IMPOSED UNDER  
THE RESIDENTIAL MORTGAGE LICENSE ACT OF 1987

Pursuant to Section 4-5(h) of the Residential Mortgage License Act of 1987 ("the Act"), 205 ILCS 635/4-5(h) (2000), notice is hereby given that the Commissioner of the Office of Banks and Real Estate of the State of Illinois has issued a fine of \$550 dollars against American Business Mortgage Services, Inc., License No. 4853, of Roseland, New Jersey, a license under the Act, for violating the terms of the Act and the rules and regulations adopted thereunder, effective August 10, 2001.

## DEPARTMENT OF LABOR

## NOTICE OF PUBLIC INFORMATION

CONTRACTOR PROHIBITED FROM AN AWARD  
OF A CONTRACT OR SUBCONTRACT  
FOR PUBLIC WORKS PROJECTS

Pursuant to the settlement of In re: Thompson Contracting, IDOL File Nos. 01-PW-TG07-0781, the Director of the Department of Labor gives notice that Jim Thompson, owner of Thompson Contracting, and any other officer, partner, shareholder or title holder of Thompson Contracting or Thompson Construction, currently located at East Twelfth and South Lincoln, P.O. Box 1024, Oquawka, Illinois 61469, are prohibited from bidding, accepting or working on any contract of subcontract for a public works project covered by the Prevailing Wage Act, 820 ILCS 130/0.01-12 (2000), commencing August 1, 2001 and continuing through July 31, 2002.

Copies of the Prevailing Wage Act are available on the internet at <<http://www.legis.state.il.us/ilcs/ch820/ch820act130.htm>>, and the:

Illinois Department of Labor  
Conciliation and Mediation Division  
One West Old State Capitol Plaza, Room 300  
Springfield, Illinois 62701-1217

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

a) Part(s) (Heading and Code Citation): Income Tax, 86 Ill. Adm. Code 100

1) Rulemaking:

A) Description: New rules will be added to Part 100 concerning the foreign tax credit against the income tax (IITA Section 601(b)(3); the tax credit for Tech Prep Youth Vocational Programs (IITA Section 209); the Dependent Care Assistance Credit (IITA Section 210); the Employee Child Care Tax Credit (IITA Section 210.5); the Economic Development for a Growing Economy Tax Credit (IITA Section 211); the reallocation of items under IITA Section 404; pass-through of investment credits from partnerships and Subchapter S corporations to their partners and shareholders; the earned income credit (IITA Section 212); net operating loss carryovers for individuals, offsets of refunds against other liabilities, statutes of limitations, and interest computations.

Part 100 will be amended by the addition of rules defining "investment company" within the meaning of 35 ILCS 5/1501(a)(8).

Part 100 will be amended by adding rules and amending existing rules governing the apportionment of business income under 35 ILCS 5/304.

Part 100 will be amended to update the provisions defining unitary business groups and computing the combined tax liability of unitary business groups.

Part 100 will be amended to provide guidance for determining whether a nonresident has sufficient nexus to be subject to income taxation in Illinois.

Part 100 will be amended to provide guidance for the carryover of losses by partnerships and Subchapter S corporations.

Part 100 will be amended by adding rules providing guidance on the taxation of entities that are disregarded for federal income tax purposes, on the addition and subtraction modifications allowed in IITA Section 203, on the credit for residential property taxes paid in IITA Section 208 and on the issue of when a taxpayer is subject to tax in another state under IITA Section 303(f).

Part 100 will be amended to clarify the rules implementing the "innocent spouse" relief enacted in Public Act 91-541.

Part 100 will be amended by adding rules implementing IITA Section 405.

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

Some rules changes will be made to Part 100, as a result of recent legislation, including legislation passed by the 92nd General Assembly and signed by the Governor after the date of publication of this Agenda. As a result of the adoption of P.A. 88-669, rules with respect to acceptance of substitute W-2s will be proposed. Pursuant to federal P.L. 104-95, Part 100 will be revised to clarify that nonresident retirement income is exempt.

Part 100 will be amended to clarify issues in claiming the coal credits in IITA Section 206, the research and development credit in IITA Section 201(k) and the environmental remediation credit under IITA Section 201(l).

Part 100 will be amended to provide guidance for payment of estimated taxes during short taxable years, during years in which marital status changes, and for computation of penalties.

Part 100 will be amended to clarify the documentation requirements for taxpayers claiming the training expense credit under Section 100.2150.

Part 100 will be amended to clarify definitions of terms in IITA Section 1501(a).

Finally, the Department will continue the updating and correction of Part 100.

B) Statutory Authority: 35 ILCS 5/101 and 35 ILCS 5/1401

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: As noted above, there will be a number of rulemakings proposed with respect to Part 100 over the next six months. We anticipate filing rulemakings amending Part 100 on a regular basis during the next six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: These rulemakings will affect any business that incurs an income tax filing obligation.

F) Agency contact person for information:

Paul S. Caselton  
Deputy General Counsel - Income Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

Springfield IL 62794  
217/782-7055

G) Related rulemakings and other pertinent information: None

b) Part(s) (Heading and Code Citation): Property Tax Code, 86 Ill. Adm. Code 110

1) Rulemaking:

A) Description: Part 110 will be amended to update rules as a result of Public Acts 91-377; 91-393; 91-425 and 91-732.

B) Statutory Authority: 35 ILCS 200/Arts. 6, 14, and 16

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: We anticipate filing these rulemakings during the next six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: These rulemakings will affect local assessing officials.

F) Agency contact person for information:

Karen Alice Kloppe  
Associate Counsel 96 Property Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: None

c) Part(s) (Heading and Code Citation): Real Estate Transfer Tax, 86 Ill. Adm. Code 120

1) Rulemaking:

A) Description: Part 120 will be amended (1) to correct form references, (2) to delete language made obsolete and redundant by the adoption of rulemaking adding Section 120.5, (3) to clarify procedures for the purchase of revenue stamps by recorders of deeds and registrars of title from the Department, and (4) to



## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

provide additional policy interpretations on common audit problems for taxpayers in Sections 120.10 and 120.20.

- B) Statutory Authority: 35 ILCS 200/31-1 through 31-70
- C) Scheduled meetings/hearing dates: No schedule has been established at this time.

- D) Date agency anticipates First Notice: We anticipate filing both rulemakings during the next six months of this year.

- E) Effect on small business, small municipalities or not for profit corporations: These rulemakings will affect any person or business entity transferring title to real estate unless specifically exempted under Section 31-45 of the Property Tax Code.

- F) Agency contact person for information:

Karen Alice Kloppe  
Associate Counsel 96 Property Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

- G) Related rulemakings and other pertinent information: None

- d) Part(s) (Heading and Code Citation): Retailers' Occupation Tax, 86 Ill. Adm. Code 130

1) Rulemaking:

- A) Description: Amendments will be made to update the Retailers' Occupation Tax regulations to reflect new statutory developments and decisional law (NOTE: Pending legislation at the time of this agenda is noted as a bill). Some of the highlights of these changes include:

1. Anticipated revision of Section 130.330 (Manufacturing Machinery and Equipment exemption) to explain taxation of chemicals used in manufacturing and the expanded CAD/CAM manufacturing exemption, as provided for in HB 3289; to reference significant decisional law (Van's Materials, Zenith); and to clarify the exemption as it applies to the production or manufacture of food.

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

2. Revision of Section 130.2004 (Nontaxable Transactions) to implement the provisions of Public Act 92-0035, which restricted the exemption afforded to not-for-profit arts or cultural organizations organized and operated for the presentation or support of arts or cultural programming, activities, or services;

3. Revision of Section 130.415 (transportation and delivery charges) to add examples and clarify the requirement of a separate agreement between seller and purchaser;

4. Revision of Section 130.901 (Civil Penalties) to clarify penalties for overcollection in leasing situations;

5. Promulgation of regulation codifying the provisions of Informational Bulletin No. 86-54;

6. Amendment of Section 130.331 (Manufacturer's Purchase Credit) to address new issues that have arisen (e.g., acceptance of certificates after sale has occurred);

7. Anticipated revision of Section 130.120 pursuant to HB 3289 to add exemption for sales of food for human consumption that is to be consumed off the premises where it is sold (other than alcoholic beverages, soft drinks, and food that has been prepared for immediate consumption) and prescription and nonprescription medicines, drugs, medical appliances, and insulin, urine testing materials, syringes, and needles used by diabetics, for human use, when purchased for use by a person receiving medical assistance under Article 5 of the Illinois Public Aid Code who resides in a licensed long-term care facility, as defined in the Nursing Home Care Act;

8. Anticipated amendment of Section 130.325 (graphic arts exemption) to provide that equipment includes chemicals or chemicals acting as catalysts but only if the chemicals or chemicals acting as catalysts effect a direct and immediate change upon a graphic arts product, per HB 3289;

9. Anticipated amendment of Section 130.535 to reflect the lowered thresholds for prepaid sales tax accelerated taxpayers, per HB 3289 and the new mandatory EFT thresholds established by SB 1176;

10. Anticipated promulgation of new regulations governing implementation of the direct pay program, per HB 3289;

11. Revision of Sections 130.1301 and 130.1305 to clarify

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

registration and reporting requirements for vendors at craft/antique malls;

12. Revision of Section 130.335 (Pollution Control) to discuss recent case law;

13. Revision of Section 130.2155 (Vendors of Signs) to clarify Department's taxation of signage;

14. Revision of Section 130.310 (Food, Drugs & Medicines) to clarify the meaning of a medicinal claim;

15. Revision of Section 130.1501 (Claims for Credit) to clarify the requirement of a vendor unconditionally repaying the vendee from whom tax was collected;

16. Anticipated amendment of Section 130.332 to provide for expanded exemption beginning January 1, 2002, for machines and parts for machines used in commercial, coin-operated amusement and vending businesses if a use or occupation tax is paid on the gross receipts derived from the use of the commercial, coin-operated amusement and vending machines, per HB 2113;

17. Amendment of Section 130.1951, Enterprise Zone exemptions, to provide for expanded building materials exemption per P.A. 91-0954 and for new coal incentives per P.A. 92-0012;

18. Anticipated amendment of Sections 130.2011 and 130.2012 to provide for exemption (sunsetting on 1-1-00) for lessors purchasing property rented to governmental bodies and of certain property (i.e., computers and communications equipment) rented to exempt hospitals, per SB 617;

19. Amendment of Section 130.445 to clarify when federal excise taxes may be deducted from gross receipts in calculating ROT liability (Section 4051 of the Internal Revenue Code); and

20. Amendment of Section 130.2080 to reflect the holding in Japan Air Lines Ltd. v. Zehnder (Nos. 96-L-5050 and 96-L-50539, First District Appellate Court).

B) Statutory Authority: 35 ILCS 120

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: As noted above, there will

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

be a number of rulemakings proposed with respect to Part 130 over the next six months. We anticipate filing rulemakings amending Part 130 on a regular basis during the next six months of this year.

E) Effect on small business, small municipalities or not-for-profit corporations: Small businesses that sell tangible personal property at retail will be affected by these regulations.

F) Agency contact person for information:

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: None

e) Part(s) (Heading and Code Citation): Service Occupation Tax, 86 Ill. Adm. Code 140

1) Rulemaking:

A) Description: These rules are part of a general update to clarify application of the Service Occupation Tax. Amendments anticipated include corrections of specific time limits for bulk sales procedures and examples of how multi-state, multi-service transactions are taxed.

B) Statutory Authority: 35 ILCS 115

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: As noted above, there will be a number of rulemakings proposed with respect to Part 140 over the next six months. We anticipate filing rulemakings amending Part 140 on a regular basis during the next six months of this year.

E) Effect on small business, small municipalities or not-for-profit corporations: Servicemen transferring tangible personal property incident to service will be affected by these rules.

F) Agency contact person for information:

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: Nonef) Part(s) (Heading and Code Citation): Use Tax, 86 Ill. Adm. Code 1501) Rulemaking:

A) Description: Amendments will be made to update the Use Tax regulations to reflect new statutory developments and decisional law. NOTE: Pending legislation at the time of this agenda is noted as a bill. Many of the changes contemplated for the Retailers' Occupation Tax Act regulations will also be made for corresponding Use Tax Act regulations. In addition, the rolling stock regulation (Section 150.340) will be amended to provide that taxation of property reverting to a lessor shall be determined by the property's fair market value at the time of reversion, not to exceed the original purchase price of the property that was paid by the lessor. Regulations governing the expanded temporary storage exemption provided for by SB 730, and the direct pay program provided for in HB 3289, are also anticipated.

B) Statutory Authority: 35 ILCS 105

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 150 during the next six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Use Tax.

F) Agency contact person for information:

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

217/782-6996

G) Related rulemakings and other pertinent information: Noneg) Part(s) (Heading and Code Citation): Service Use Tax, 86 Ill. Adm. Code 1601) Rulemaking:

A) Description: Amendments will be made to update the Service Use Tax regulations to reflect new statutory developments and decisional law.

B) Statutory Authority: 35 ILCS 110

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 160 during the next six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Service Use Tax.

F) Agency contact person for information:

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: Noneh) Part(s) (Heading and Code Citation): Automobile Renting Occupation Tax, 86 Ill. Adm. Code 1801) Rulemaking:

A) Description: Amendments will be made to update the Automobile Renting Occupation Tax regulations to define what types of "automobiles," are subject to tax, especially in regard to sport utility vehicles.



## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

- B) Statutory Authority: 35 ILCS 155
- C) Scheduled meetings/hearing dates: No schedule has been established at this time.
- D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 180 during the next six months of this year.
- E) Effect on small business, small municipalities or not for profit corporations: These rulemakings will affect persons subject to the Automobile Renting Occupation and Use Tax Act.
- F) Agency contact person for information:  
George Sorensen  
Deputy General Counsel & Sales and Excise Taxes  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996
- G) Related rulemakings and other pertinent information: None
- i) Part(s) (Heading and Code Citation): Cigarette Tax, 86 Ill. Adm. Code 440
- 1) Rulemaking:  
A) Description: Amendments will be made to the Cigarette Tax regulations to reflect new statutory developments and to add provisions regarding the procedures for revocation, suspension and denials of licenses.  
B) Statutory Authority: 35 ILCS 130  
C) Scheduled meetings/hearing dates: No schedule has been established at this time.  
D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 440 during the next six months of this year.  
E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Cigarette Tax.  
F) Agency contact person for information:  
George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996
- G) Related rulemakings and other pertinent information: None
- j) Part(s) (Heading and Code Citation): Cigarette Use Tax, 86 Ill. Adm. Code 450
- 1) Rulemaking:  
A) Description: Amendments will be made to the Cigarette Use Tax regulations to reflect new statutory developments and to add provisions regarding the procedures for revocation, suspension and denials of licenses.  
B) Statutory Authority: 35 ILCS 135  
C) Scheduled meetings/hearing dates: No schedule has been established at this time.  
D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 450 during the next six months of this year.  
E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Cigarette Use Tax.  
F) Agency contact person for information:  
George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996
- G) Related rulemakings and other pertinent information: None
- k) Part(s) (Heading and Code Citation): Telecommunications Excise Tax, 86 Ill. Adm. Code 495

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

- George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996
- G) Related rulemakings and other pertinent information: None
- j) Part(s) (Heading and Code Citation): Cigarette Use Tax, 86 Ill. Adm. Code 450
- 1) Rulemaking:  
A) Description: Amendments will be made to the Cigarette Use Tax regulations to reflect new statutory developments and to add provisions regarding the procedures for revocation, suspension and denials of licenses.  
B) Statutory Authority: 35 ILCS 135  
C) Scheduled meetings/hearing dates: No schedule has been established at this time.  
D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 450 during the next six months of this year.  
E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Cigarette Use Tax.  
F) Agency contact person for information:  
George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996
- G) Related rulemakings and other pertinent information: None
- k) Part(s) (Heading and Code Citation): Telecommunications Excise Tax, 86 Ill. Adm. Code 495

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

1) Rulemaking:

A) Description: Regulations will be updated to reflect new statutory provisions and decisional law. NOTE: Pending legislation at the time of this agenda is noted as a bill. A regulation clarifying the definition of "service address" will be proposed and the Department's treatment of "bridging" services will be explained. The regulations will also be amended to conform with the provisions of HB 843 (telecommunications sourcing for mobile operations).

B) Statutory Authority: 35 ILCS 630

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 495 during the next six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: Retailers of telecommunications will be affected by these regulations.

F) Agency contact person for information:

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: None

1) Part(s) (Heading and Code Citation): Motor Fuel Tax, 86 Ill. Adm. Code 500

1) Rulemaking:

A) Description: Amendments will be made to reflect new statutory developments. NOTE: Pending legislation at the time of this agenda is noted as a bill. The imposition of civil penalties for violations of dyed diesel provisions will also be clarified. New rules for evaporation and loss allowances, as well as for refunds of undyed diesel fuel used for non-highway purposes, will be added to conform to the requirements of P.A. 92-0030. Regulations will

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

also be amended to reflect the provisions of SB 855 regarding the Underground Storage Tank Tax/Environmental Impact fee as applied to sales to rail carriers. Changes are also anticipated regarding information required on motor fuel licenses, and the procedures used when a licensee changes only its name. Rules governing the Department's treatment of pipeline trading under the Law are also anticipated. Clarification of the term, "air carrier affiliate", as used in Section 2a of the Law and in the Environmental Impact Fee Act, is also anticipated.

B) Statutory Authority: 35 ILCS 505

C) Scheduled meetings/hearing dates: No schedule has been established at this time.

D) Date agency anticipates First Notice: As noted above there will be a number of rulemakings proposed with respect to Part 500 over the next six months. We anticipate filing rulemakings amending Part 500 on a regular basis during the second six months of this year.

E) Effect on small business, small municipalities or not for profit corporations: Distributors, suppliers and receivers of motor fuel, as well as persons paying Motor Fuel Use Tax under the International Fuel Tax Agreement.

F) Agency contact person for information:

George Sorensen  
Deputy General Counsel - Sales and Excise Tax  
Illinois Department of Revenue  
101 W. Jefferson, 5-500  
Springfield IL 62794  
217/782-6996

G) Related rulemakings and other pertinent information: None

m) Part(s) (Heading and Code Citation): Electricity Excise Tax, 86 Ill. Adm. Code 511 (New Part)

1) Rulemaking:

A) Description: New regulations will be added to reflect recent and statutory developments. NOTE: Legislation pending at the time of this agenda is noted as a bill. Regulations will be promulgated to implement the provisions of the Electricity Excise Tax Law (P.A. 90-561) and the new EFT thresholds established by SB 1176.



## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

- B) Statutory Authority: 35 ILCS 640
- C) Scheduled meetings/hearing dates: No schedule has been established at this time.
- D) Date agency anticipates First Notice: We anticipate filing rulemakings amending Part 511 during the next six months of this year.
- E) Effect on small business, small municipalities or not for profit corporations: These amendments will affect persons subject to the Electricity Excise Tax.
- F) Agency contact person for information:  
 George Sorensen  
 Deputy General Counsel - Sales and Excise Tax  
 Illinois Department of Revenue  
 101 W. Jefferson, 5-500  
 Springfield IL 62794  
 217/782-6996

G) Related rulemakings and other pertinent information: None

n) Part(s) (Heading and Code Citation): Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act, 86 Ill. Adm. Code 530

1) Rulemaking:

- A) Description: Part 530 will be amended to update rules for the Property Tax Relief Program as a result of Public Act 91-699.
- B) Statutory Authority: 320 ILCS 25/1 through 13
- C) Scheduled meetings/hearing dates: No schedule has been established at this time.
- D) Date agency anticipates First Notice: We anticipate filing this rulemaking during the next six months of this year.
- E) Effect on small business, small municipalities or not for profit corporations: This rulemaking will affect any person seeking a property tax grant under the Senior Citizens and Disabled Persons Property Tax Relief and Pharmaceutical Assistance Act.
- F) Agency contact person for information:

## DEPARTMENT OF REVENUE

## JULY 2001 REGULATORY AGENDA

Karen Alice Kloppe  
 Associate Counsel & Property Tax  
 Illinois Department of Revenue  
 101 W. Jefferson, 5-500  
 Springfield IL 62794  
 217/782-6996

G) Related rulemakings and other pertinent information: None



JOINT COMMITTEE ON ADMINISTRATIVE RULES  
ILLINOIS GENERAL ASSEMBLY

## SECOND NOTICES RECEIVED

The following second notices were received by the Joint Committee on Administrative Rules during the period of August 7, 2001 through August 13, 2001 and have been scheduled for review by the Committee at its September 11, 2001 meeting in Chicago. Other items not contained in this published list may also be considered. Members of the public wishing to express their views with respect to a rulemaking should submit written comments to the Committee at the following address: Joint Committee on Administrative Rules, 700 Stratton Bldg., Springfield IL 62706.

<u>Second Notice Expires</u>	<u>Agency and Rule</u>	<u>Start Of First Notice</u>	<u>JCAR Meeting</u>
9/20/01	<u>Secretary of State</u> , Issuance of Licenses (92 Ill Adm Code 1030)	6/22/01 25 Ill Reg 7547	9/11/01
9/22/01	<u>Department of Financial Institutions</u> , Illinois Credit Union Act (38 Ill Adm Code 190)	5/25/01 25 Ill Reg 6585	9/11/01
9/22/01	<u>Department of State Police</u> , Individual's Right to Access and Review Criminal History Record Information (20 Ill Adm Code 1210)	6/22/01 25 Ill Reg 7559	9/11/01
9/23/01	<u>Department of Public Health</u> , Grade A Pasteurized Milk and Milk Products (77 Ill Adm Code 775)	5/4/01 25 Ill Reg 5846	9/11/01
9/26/01	<u>Housing Development Authority</u> , Affordable Housing Program (47 Ill Adm Code 360)	6/15/01 25 Ill Reg 7420	9/11/01
9/26/01	<u>Illinois Commerce Commission</u> , Designation of Agent (83 Ill Adm Code 215)	5/25/01 25 Ill Reg 6578	9/11/01

